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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH00

Emergency Planning and Preparedness For Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its emergency planning regulations governing the domestic licensing of production and utilization facilities. The final rule amends the current regulations as they relate to NRC approval of licensee changes to Emergency Action Levels (EALs). The final rule also clarifies exercise requirements for co-located licensees. These amendments are intended to resolve an inconsistency and an ambiguity in current regulations.

DATES: *Effective Date:* April 26, 2005.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–3224. E-mail: *MTJ1@NRC.GOV*.

SUPPLEMENTARY INFORMATION: The Commission is making two changes to its emergency preparedness regulations contained in 10 CFR Part 50, Appendix E. The first amendment relates to NRC approval of licensee changes to EALs, paragraph IV.B and the second amendment relates to exercise requirements for co-located licensees, paragraph IV.F.2. A discussion of each of these revisions follows.

(1) NRC Approval of Licensee Changes To EALs, 10 CFR Part 50, Appendix E, Paragraph IV.B.

EALs are part of a licensee's emergency plan. There is an inconsistency in the emergency planning regulations regarding the threshold for when NRC approval of nuclear power plant licensee changes to EALs is required. Section 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of appendix E'' to 10 CFR part 50. By contrast, Appendix E states that ''emergency action levels shall be * * * approved by NRC.'' Current industry practice follows the provisions of § 50.54(q). Industry has generally made and implemented revisions to EALs without requesting NRC approval after determining that the changes do not decrease the effectiveness of the emergency plan. When the determination is made that a change constitutes a decrease in effectiveness, licensees submit the changes to the Commission for approval. If a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' guidance to an EAL scheme based on NUMARC/NESP–007, ''Methodology for Development of Emergency Action Levels,'' or NEI–99–01, ''Methodology for Development of Emergency Actions Levels,'' guidance or if the license proposes an alternate method for complying with the regulations, the industry practice has been to seek NRC review and approval before implementing the change.

The Commission believes that prior NRC approval of every EAL change is not necessary to provide reasonable assurance that EALs will continue to provide an acceptable level of safety. This final amendment focuses on EAL changes that are of sufficient significance that a safety evaluation by the NRC is appropriate before the licensee may implement the change. The Commission believes that EAL changes that reduce the effectiveness of the emergency plan are of sufficient regulatory significance that prior NRC review and approval is warranted. This standard is the same standard that the current regulations provide for when determining whether changes to emergency plans (except EALs) require NRC review and approval. As such, this regulatory threshold has a long history of successful application. Therefore, this standard should also be used for EAL changes. On the basis of NRC's inspections of emergency plans, including EAL changes, the Commission believes that licensees have generally made appropriate determinations regarding whether an EAL change reduces the effectiveness of the emergency plan and that licensees have the capability to continue to do so. Limiting the NRC's approval to EAL changes that reduce the effectiveness of emergency plans or to an alternate method for complying with the regulations will ensure adequate NRC oversight of licensee-initiated EAL changes. This both increases regulatory effectiveness (through use of a single consistent standard for evaluating all emergency plan changes) and reduces unnecessary regulatory burden on licensees (who would not be required to submit for approval EAL changes that do not decrease the effectiveness of the emergency plan).

The Commission believes a licensee's proposal to convert from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007 or NEI–99–01 based) or to a proposed alternate method for complying with the regulations is of sufficient significance to require prior NRC review and approval. NRC review and approval for such major changes in EAL methodology is necessary to ensure that there is reasonable assurance that the final EAL change will provide an acceptable level of safety.

Accordingly, the Commission is revising Appendix E to 10 CFR Part 50 to provide that Commission approval of EAL changes is necessary for all EAL changes that decrease the effectiveness of the emergency plan and for changing from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007 or NEI–99–01-based) or for a proposal of an alternate method for complying with the regulations.

(2) Exercise Requirements for Co-Located Licensees, 10 CFR Part 50, Appendix E, Paragraph IV.F.

The emergency planning regulations were significantly upgraded in 1980 after the accident at Three Mile Island (45 FR 55402; August 19, 1980). The upgraded 1980 regulations required an annual exercise of the onsite and offsite emergency plans. The regulations were amended in 1984 to change the frequency of participation of state and local governmental authorities in nuclear power plant offsite exercises from annual to biennial (49 FR 27733; July 6, 1984). The regulations were amended in 1996 to change the frequency of exercising the licensees' onsite emergency plans from annual to biennial (61 FR 30129; June 14, 1996). Appendix E to part 50, Paragraph IV.F.2, currently provides that the ''offsite plans for each site shall be exercised biennially'' (emphasis added) with the full or partial participation of each offsite authority having a role under the plans, and that ''each licensee at each site'' shall conduct an exercise of its onsite emergency plan every 2 years, an exercise that may be included in the full or partial participation biennial exercise.[1] Thus, Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site. Specifically, it is ambiguous regarding whether each licensee must participate in a full or partial participation exercise of the offsite plan every 2 years, or whether the licensees may alternate their participation such that a full or partial participation exercise is held every 2 years and each licensee (at a two-licensee site) participates in a full or partial participation exercise every 4 years.

Upon consideration of the language of the current regulation and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulation shall be interpreted such that each nuclear power plant licensee, co-located on the same site, must participate in a full or partial participation offsite exercise every 2 years (and that each offsite authority is to participate on either a full or partial participation basis in each licensee's biennial offsite exercise). However, upon consideration of the matter, the Commission believes that requiring each licensee on a co-located site to participate in a full or partial participation exercise every 2 years, and for the offsite authorities to participate in each licensee's full or partial participation exercise, is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that such an interpretation could impose an undue regulatory burden on offsite authorities. Currently, there is only one nuclear power plant site with power plants licensed to two separate licensees: The James A. FitzPatrick and Nine Mile Point site. Although the ambiguity in Paragraph IV.F.2 has limited impact today, the Commission understands that future nuclear power plant licensing concepts currently being considered by the industry include siting multiple nuclear power plants on either a single site or adjacent, contiguous sites. These plants may be owned and/or operated by different licensees. Therefore, the Commission believes that this final rulemaking is necessary to remove the ambiguity in Paragraph IV.F.2 and clearly specify the emergency preparedness exercise requirements for co-located licensees.

The Commission finds that where two nuclear power plants are licensed to different licensees and meet the definition of being co-located, reasonable assurance of emergency preparedness exists where:

1. The co-located licensees would exercise their onsite plans biennially;

2. The offsite authorities would exercise their plans biennially; and,

3. The interface between offsite plans and the respective onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, when one of the co-located licensees is participating in a full or partial participation exercise, the final rule requires any other co-located licensees to participate in activities and interaction (A&I) with offsite authorities. For the period between exercises, the final rule also requires the licensees to conduct emergency preparedness A&I. The purpose of these A&I would be to test and maintain interface among the affected state and local authorities and the licensees.

The Commission concludes that biennial full or partial participation exercises for each co-located licensee are not warranted and that this final regulation provides a sufficient level of assurance of emergency preparedness for the following reasons. First, the final rule is consistent with the current licensees' practice for the James A. FitzPatrick/Nine Mile Point plants. This practice has been reviewed periodically by the NRC, the Federal Emergency Management Agency (FEMA), and the State of New York. NRC has continued to find that there is reasonable assurance that appropriate measures could be taken to protect the public health and safety in the event of a radiological emergency based on NRC's assessment of the adequacy of the licensees' onsite Emergency Plannings (EP) programs, FEMA's assessment of the adequacy of the offsite EP programs, and the current level of interaction between the onsite and offsite emergency response organizations in the period between full or partial participation exercises.

Second, the central requirement of a ''partial participation'' exercise under the current regulations is to test the ''direction and control functions'' between the licensee and the offsite authorities (*i.e.*, protective action decision making related to emergency action levels and communications capabilities among affected State and local authorities and the licensee). The

[1] 10 CFR part 50, appendix E, IV.F.2, states:

2. The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.

a. * * *

b. Each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years. The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section.* * *

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every 2 years and shall, at least, partially participate in other offsite plan exercises in this period. ''Full participation'' when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and state authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant.

''Full participation'' includes testing major observable portions of the onsite and offsite emergency plans and mobilization of state, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario. ''Partial participation'' when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; *i.e.*, (a) protective action decision making related to emergency action levels; and (b) communication capabilities among affected State and local authorities and the licensee.

final rule contains a requirement that, in each of the 3 years between a licensee's participation in a full or partial participation exercise, each licensee shall participate in A&I with offsite authorities to test and maintain interface. By requiring that the licensee's emergency preparedness organization engage in activities and interactions with offsite authorities to exercise and test effective communication and coordination, the final rule provides the functional equivalent of a biennial exercise which tests the ''direction and control functions'' between the licensee and the offsite authorities. Id.

Third, the burden of requiring each licensee to participate biennially in a full or partial participation exercise with offsite participation falls most heavily on the offsite authorities (*i.e.*, the state and local authorities). The Commission's 1984 and 1996 rulemakings were specifically intended to reduce the schedule for offsite exercises to remove unnecessary burden on offsite authorities. However, the Commission did not explicitly address the unique circumstance of two plants located on a single site, with each plant owned by a different licensee. This final rulemaking addresses the undue burden placed upon offsite authorities in these circumstances.

The final rule defines co-located licensees as two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the following emergency planning and siting elements:

1. Plume exposure and ingestion emergency planning zones;
2. Offsite governmental authorities;
3. Offsite emergency response organizations;
4. Public notification system; and/or
5. Emergency facilities.

Paragraph-by-Paragraph Discussion of Changes to 10 CFR Part 50, Appendix E

A. Paragraph IV.B—Assessment Actions

This paragraph is amended by adding new language governing the type and scope of EAL changes that must receive NRC approval before implementation. The final amendment clarifies that the Commission approval of EAL changes is required for changes that decrease the effectiveness of the emergency plan when a licensee proposes an alternate method for complying with the regulations, when converting from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007 or NEI–99–01-based). The final language also clarifies the existing requirement that applicants for initial reactor operating licenses and initial COLs must obtain Commission approval of initial EALs.

B. Paragraph IV.F.2.—Training

This paragraph is amended to articulate the emergency planning exercise requirements for co-located licensees. Under the final amendment, co-located licensees are required to exercise their onsite plans biennially. The offsite authorities will exercise their plans biennially. The interface between offsite plans and the respective onsite plans will be exercised biennially in a full or partial participation exercise alternating between each licensee. Thus, each co-located licensee will participate in a full or partial participation exercise quadrennially. In addition, when one of the co-located licensees is participating in a full or partial participation exercise, the final rule requires any other co-located licensees to participate in A&I with offsite authorities. For the period between exercises, the final rule also requires the licensees to conduct emergency preparedness A&I. The purpose of A&I is to test and maintain interface among the affected State and local authorities and the licensee. Table 1 provides a graphical description of one possible way of meeting the requirements of the final rule.

TABLE 1.—EXAMPLE OF EMERGENCY PREPAREDNESS TRAINING FOR TWO (2) CO-LOCATED LICENSEES

Year	1	2	3	4	5	6	7	8	9
Licensee 1	X	A&I	A&I	A&I	X	A&I	A&I	A&I	X
Licensee 2	A&I	A&I	X	A&I	A&I	A&I	X	A&I	A&I

Notes: X = Full or partial participation exercise (with appropriate activities and interactions with offsite authorities).
A&I = Activities and interactions with offsite authorities.

A new footnote 6 is also added to provide a definition of co-located licensees. There are two elements to the definition, both of which must be satisfied. First, co-located licensees are two different licensees whose licensed facilities are located either on the same site, or on adjacent, contiguous sites. Secondly, the co-located licensees must share most of the following emergency planning and siting elements.

1. Plume exposure and ingestion emergency planning zones;
2. Offsite governmental authorities;
3. Offsite emergency response organizations;
4. Public notification system; and/or
5. Emergency facilities.

The proposed rule did not actually specify that co-located licensees are those whose facilities either share the same site, or be located on adjacent contiguous sites, this is inherent in the concept of being ''co-located.'' Nonetheless, the Commission believes that the rule should explicitly address this, and the final rule's language has been modified to include the concept of physical co-location as one of the criteria for a ''co-located'' licensee.

Comments on the Proposed Rule

On July 24, 2003 (68 FR 43673), the Commission published a notice of proposed rulemaking and requested public comments by October 7, 2003. A total of seven comment letters were received. One comment letter was from a member of the public, six from utilities. All of the utility letters were in favor of the proposed changes, while the public commenter suggested that the changes were unnecessary. However, the comment letters did provide suggested clarifications to the proposed amendments. A detailed evaluation of each comment received is outlined below.

Comment: In Paragraph IV.B (Assessment Actions), in lieu of adding ''or licensee'' in the third sentence, one commenter proposed that the following be added after the fourth sentence, ''A revision to an EAL must be discussed and agreed on by the licensee and state and local government authorities prior to implementation.''

Response: The Commission disagrees with this comment because the Commission wants the original EAL submittals from applicants and licensees to be discussed and agreed on with the state and local governments and approved by the Commission. Additionally, the Commission continues to want EALs to be reviewed by the state and local governments annually and not only when revisions are made to the EALs.

Comment: ''Reference is made throughout the proposed rule to NUMARC/NESP–007 as an alternative EAL scheme. Since the proposed rule was issued for public comment, NRC has endorsed NEI–99–01 as another acceptable EAL scheme. It is proposed that NEI–99–01 be referenced in addition to or in lieu of NUMARC/NESP–007.''

Response: The Commission agrees with this comment and has referenced NEI–99–01 throughout the final amendment accordingly.

Comment: ''The sixth and seventh sentences in the proposed Appendix E, Paragraph IV.B appear redundant to § 50.54(q), with regard to emergency plan revisions, and Appendix E Paragraph V, with regard to implementing procedure revisions. Furthermore, these additions might necessitate a complementary change to § 50.4(b)(5) which explicitly references submittals pursuant to § 50.54(q) and appendix E Paragraph V. It is proposed that these two sentences be excluded from the final rule.''

Response: The Commission disagrees with this comment in that sentences six and seven are consistent with § 50.54(q) and 50.4 regarding sending information to the Commission. Therefore, these sentences do not necessitate a complementary change to § 50.4, nor should they be deleted from the final regulation.

Comment: ''There is a possible ambiguity in Table 1—Example of Emergency Preparedness Training for Two (2) Co-Located Licensees. The table, as well as the text of the proposed changes, does not indicate that in those years when a licensee participates in a full-participation exercise, that licensee also participates in A&I with offsite response organizations. The result of this ambiguity could be an interpretation that only the non-participating licensee has any responsibility for A&I during an exercise year. The wording of the text and the table should be clarified.''

Response: The Commission agrees and has modified Table 1 accordingly.

Comment: ''The list of A&I in the proposed rule contains requirements that may not apply to sites other than the James A. FitzPatrick and Nine Mile Point sites, currently the only site with two power plants licensed to two separate licensees. For instance, the last recommended interaction is ''Licensee provides use of weapons firing range to local and state law enforcement (Sheriff, State Police).'' While this interaction may have been negotiated as part of a support agreement for offsite response agencies at one site, it may not be appropriate at other sites.''

Response: The Commission agrees and has modified the list of A&I that are now contained in Regulatory Guide 1.101, Rev 5.

Comment: The language in § 50.54(q) could be further improved by establishing clear criteria for what constitutes a decrease in effectiveness of the Emergency Plan. Specifically, the following language should be revised, ''may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of paragraph 50.47(b) and the requirements of Appendix E to this part.''

The commenter suggested to add the words ''a change to an emergency plan will not decrease the effectiveness of the plan if the change will not decrease the abilities of the emergency response organization, and/or supporting emergency response facilities and equipment, as required by paragraphs 10 CFR 50.47(b) and appendix E, or equivalent measures approved under 10 CFR 50.47(c), to reasonably assure the adequate protection of public health and safety in the event of a radiological emergency as stated in 10 CFR 50.47(a)(1). The change cannot delete any of the capabilities described in 10 CFR 50.47(b) and (d), or in appendix E to 10 CFR part 50.''

Response: While the Commission recognizes the merits of this comment, revising 10 CFR 50.54(q) to define what is meant by ''decreasing the effectiveness'' of the emergency plans was not published as part of the proposed rule and is therefore beyond the scope of this rulemaking.

Comment: One commenter believes that clarifying exercise requirements to allow alternating participation in exercises for co-located licensees will remove ambiguity that currently exists. The proposed exercise frequency, coupled with the detailed activities and interactions, will continue to provide a sufficient level of assurance of offsite emergency preparedness. Also, it will provide clear guidance for future licensing actions and avoid undue burden on offsite response organizations. Section B. [69 FR 43675–43676] is very specific in its wording as to what is the responsibility of the licensee. In this regard the rule should not be specific but refer to the commitments defined in the respective emergency response plans. The commenter believes the licensee, state, and local emergency response organizations should have the latitude to determine the appropriate training and implementation responsibilities.

Response: The Commission agrees and has removed the list of A&I from this rulemaking but has placed that list of A&I into Regulatory Guide 1.101, Rev. 5.

Comment: One commenter believes the proposed amendment to Appendix E, paragraph IV.B is unnecessary. The commenter states that the conclusion that the current regulations are unclear and can be interpreted to require prior NRC approval for all changes to a licensee's EAL requires a torturous reading of the current language.

Response: The Commission disagrees with this comment. The Commission believes that the regulations are ambiguous enough to be read to require NRC approval for all EAL changes. Consequently, the amendment to appendix E, paragraph IV.B is necessary to clarify that NRC approval of all EAL changes is not necessary to ensure an adequate level of safety.

Metric Policy

On October 7, 1992, the Commission published its final Policy Statement on Metrication. According to that policy, after January 7, 1993, all new regulations and major amendments to existing regulations were to be presented in dual units. These final amendments to the regulations contain no units.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. This final rulemaking addresses two matters:

(1) The circumstances under which a licensee may modify an existing EAL without prior NRC review and approval; and

(2) The nature and scheduling of emergency preparedness exercises for two different licensees of nuclear power plants which are co-located on the same site (co-located licensees). These are not matters which are appropriate for addressing in industry consensus standards, and have not been the subject of these standards. Accordingly, this final rulemaking is not within the purview of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113.

Environmental Assessment and Finding of No Significant Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the final amendments are not major Federal actions significantly affecting the quality of human environment, and therefore, an environmental impact statement is not required. The basis for this determination reads as follows:

Need for the Action

1. NRC Review of Changes to Emergency Action Levels

10 CFR 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E'' to 10 CFR part 50. By contrast, Appendix E states that ''emergency action levels shall be * * * approved by NRC.'' The industry practice, in general, has been to revise EALs in ways that do not reduce the effectiveness of the emergency plan and to implement the changes in accordance with § 50.54(q) without requesting NRC approval. The Commission believes that the current regulations are unclear and can be interpreted to require prior NRC approval for all licensee EAL changes. The Commission has determined that NRC approval of all EAL changes is not necessary to ensure an adequate level of safety. Thus, the current regulation imposes an unnecessary burden on licensees and the NRC.

2. Exercise Requirements for Co-Located Licensees (paragraph IV.F.2.)

10 CFR Part 50, appendix E, requires that the offsite emergency plans for each site shall be exercised biennially with the full or partial participation of each offsite authority having a role under the plans and that each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years, an exercise that may be included in the full participation biennial exercise. Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where two nuclear power plants, each licensed to a different licensee, meet the definition of being co-located. Specifically, it is ambiguous regarding whether each licensee must participate in a full-participation exercise of the offsite plan every 2 years, or whether the licensees may alternate their participation, so that a full participation exercise is held every 2 years and each licensee (at a two-licensee site) participates in a full participation exercise every 4 years.

Upon consideration of the language of the current regulation and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulations can be interpreted that each nuclear power plant licensee co-located on either the same site, or two or more adjacent, contiguous sites, must participate in a full participation offsite exercise every 2 years (and that each offsite authority is to participate on either a full or partial participation basis in the licensee's biennial offsite exercise).

However, the Commission believes that requiring each co-located licensee to participate in a full participation exercise every 2 years, and for the offsite authorities to participate in each licensee's full participation exercise, is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that this interpretation could impose an undue regulatory burden on offsite authorities. Therefore, the Commission believes that rulemaking is necessary to make clear that each co-located licensee need not participate in a full participation offsite exercise every 2 years.

The Commission finds that where two nuclear power plants are licensed to different licensees and meet the definition of being co-located, reasonable assurance of emergency preparedness exists where:

(1) The co-located licensees would exercise their onsite plans biennially;

(2) The offsite authorities would exercise their plans biennially; and,

(3) The interface between offsite plans and the respective onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, when one of the co-located licensees is participating in a full or partial participation exercise, the final rule requires the other co-located licensee to participate in A&I with offsite authorities. For the period between exercises, the final rule also requires the licensees to conduct emergency preparedness activities and interactions. The purpose of A&I would be to test and maintain interface among the affected state and local authorities and the licensees.

Environmental Impact of the Final Actions

The NRC believes that the environmental impact for the final rule is negligible. The final rule does not require any changes to the design or the structures, systems and components of any nuclear power plant. The final rule would not require any changes to licensee programs and procedures for actual operation of nuclear power plants. Thus, there would be no change in radiation dose to any member of the public which may be attributed to the final rule, nor will there be any changes in occupational exposures to workers. Furthermore, the final rule will not result in any changes that would increase or change the nature of nonradiological effluents from nuclear power plants.

Alternative to the Final Actions

The alternative to the final action is to not revise the regulations (*i.e.*, the no action alternative). No environmental impacts are associated with the no action alternative.

Agencies and Persons Consulted

Cognizant personnel from the Federal Emergency Management Agency and New York State (for the co-located licensee part of the rule change), were consulted as part of this rulemaking activity.

Paperwork Reduction Act Statement

This final rule increases the burden on co-located licensees to log activities and interactions with offsite agencies during the years that full or partial participation emergency preparedness exercises are not conducted and to prepare a one-time change to procedures to reflect the revised exercise requirements. The public burden for this information is estimated to average 30 hours per co-located licensee per year. Because the burden for this information collection is insignificant, OMB clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. This analysis examines the costs and benefits

of the alternatives considered by the Commission.

I. Statement of Problem and Objectives

The Commission is making two changes to its emergency preparedness regulations contained in 10 CFR part 50, appendix E. The first amendment relates to the NRC approval of licensee changes to EALs, paragraph IV.B and the second amendment relates to exercise requirements for co-located licensees, paragraph IV.F.2. A discussion of each of these final amendments follows.

(1) NRC Approval of Licensee Changes to EALs, 10 CFR Part 50, Appendix E, Paragraph IV.B

EALs are part of a licensee's emergency plan. There is an inconsistency in the emergency planning regulations regarding the threshold for when NRC approval of nuclear power plant licensee changes to emergency action levels is required. Section 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of appendix E'' to 10 CFR part 50. By contrast, appendix E states that ''emergency action levels shall be * * * approved by NRC.'' Current industry practice has been to make revisions to EALs and to implement them without requesting NRC approval, after determining that the changes do not reduce the effectiveness of the emergency plan in accordance with § 50.54(q). When the determination is made that a final change constitutes a decrease in effectiveness, licensees submit the changes to the Commission for approval. If a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG–0654 guidance to an EAL scheme based on NUMARC/NESP–007 or NEI–99–01 guidance, or when proposing an alternate method for complying with the regulations, it has been the industry practice to seek NRC review and approval before implementing the change.

(2) Exercise Requirements for Co-Located Licensees, 10 CFR Part 50, Appendix E, Paragraph IV.F

The emergency planning regulations were significantly upgraded in 1980 after the accident at Three Mile Island (45 FR 55402; August 19, 1980). The updated 1980 regulations required an annual exercise of the onsite and offsite emergency plans. The regulations were amended in 1984 to change the frequency of participation of state and local governmental authorities in nuclear power plant offsite exercises from annual to biennial (49 FR 27733; July 6, 1984). The regulations were amended in 1996 to change the frequency of exercising the licensees' onsite emergency plans from annual to biennial (61 FR 30129; June 14, 1996). Appendix E, to 10 CFR part 50, paragraph IV.F.2, currently provides that the ''offsite plans for each site shall be exercised biennially'' with the full or partial participation of each offsite authority having a role under the plans, and that ''each licensee at each site'' shall conduct an exercise of its onsite emergency plan every 2 years, an exercise that may be included in the full participation biennial exercise. Thus, paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where two nuclear power plants, each licensed to a different licensee, and meet the definition of being co-located. Specifically, it is ambiguous regarding whether each licensee must participate in a full participation exercise of the offsite plan every 2 years, or whether the licensees may alternate their participation so that a full participation exercise is held every 2 years and each licensee (at a two-licensee site) participates in a full participation exercise every 4 years.

Upon consideration of the language of the current regulation and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulations can be interpreted that each co-located nuclear power plant licensee must participate in a full participation offsite exercise every 2 years (and that each offsite authority is to participate on either a full or partial participation basis in each licensee's biennial offsite exercise). However, upon consideration of the matter, the Commission believes that requiring each co-located licensee to participate in a full participation exercise every 2 years, and for the offsite authorities to participate in each licensee's full participation exercise, is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that this interpretation could impose an undue regulatory burden on offsite authorities. Currently, there is only one nuclear power plant site with two power plants licensed to two separate licensees: the James A. FitzPatrick and Nine Mile Point site. Although the ambiguity in paragraph IV.F.2 has limited impact today, the Commission understands that future nuclear power plant licensing concepts currently being considered by the industry include siting multiple nuclear power plants on either a single site or adjacent, contiguous sites. These plants may be owned and/or operated by different licensees. Therefore, the Commission believes that this rulemaking is necessary to remove the ambiguity in paragraph IV.F.2 and clearly specify the emergency preparedness exercise obligations of co-located licensees.

The Commission has determined that where two nuclear power plants are licensed to different licensees and meet the definition of being co-located, reasonable assurance of emergency preparedness exists where:

(1) The co-located licensees would exercise their onsite plans biennially;

(2) The offsite authorities would exercise their plans biennially; and

(3) The interface between offsite plans and the respective onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the final rule requires the other co-located licensee to participate in A&I with offsite authorities. For the period between exercises, the final rule also requires the licensees to conduct emergency preparedness activities and interactions. The purpose of A&I would be to test and maintain interface among the affected state and local authorities and the licensees.

The final rule defines co-located licensees as two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the following emergency planning and siting elements.

1. Plume exposure and ingestion emergency planning zones;
2. Offsite governmental authorities;
3. Offsite emergency response organizations,
4. Public notification system; and/or
5. Emergency facilities.

II. Background

(1) Emergency Action Levels (Paragraph IV.B)

EALs are thresholds of plant parameters (such as containment pressure and radiation levels) used to classify events at nuclear power plants

into one of four emergency classes (Notification of Unusual Event, Alert, Site Area Emergency, or General Emergency). EALs are required by appendix E to 10 CFR part 50 and § 50.47(b)(4), and are contained in licensees' emergency plans and emergency plan implementing procedures.

Section 50.54(q) states that licensees can make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of appendix E'' to 10 CFR part 50. However, Appendix E to 10 CFR part 50 states that, ''These emergency action levels shall be discussed and agreed on by the applicant and state and local governmental authorities and approved by NRC.'' Because EALs are required to be included in the emergency plan, the issue is whether changes to EALs incorporated into the emergency plan are subject to the change requirements in 10 CFR 50.54(q), or to the more restrictive requirement in appendix E to 10 CFR part 50.

(2) Exercise Requirements for Co-Located Licensees (Paragraph IV.F.2)

The NRC's current regulations contained in appendix E to 10 CFR part 50, require that the offsite emergency plans for each site shall be exercised biennially with the full or partial participation of each offsite authority having a role under the plans and that each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years, an exercise that may be included in the full participation biennial exercise. This exercise requirement, though straightforward, has implementation and compliance problems when two or more licensees' facilities are located either on the same site or on adjacent, contiguous sites, thereby requiring the same state to conduct a full participation exercise with each co-located licensee every year.

There is currently only one site with two licensees, the Nine Mile Point and James A. FitzPatrick site. However, the nuclear industry has expressed the possibility of locating new plants on currently approved sites, possibly with different licensees, thus the need for this final rule change.

III. Rulemaking Options for Both Amendments

Option 1—Revise the regulations to reflect current staff and licensee practices.

Option 2—Not to revise the regulations.

IV. Alternatives

Impact(s)

Option 1 for the EAL revisions would amend the existing regulations to eliminate the inconsistency between the requirements of 10 CFR part 50, appendix E and § 50.54(q) relating to approval of changes to EALs and reflect current staff and licensee practice. This would be done by amending appendix E to 10 CFR part 50 to require NRC to approve new EAL schemes, as well as proposals of alternate methods for complying with the regulations, and requiring Commission approval of revisions to EALs that reduce the effectiveness of the emergency plans in accordance with § 50.54(q). The rulemaking would provide a means for licensees to make changes to their EALs while reducing unnecessary regulatory burden.

Once the rule is revised, licensees could make EAL changes that do not decrease the effectiveness of the emergency plan without a submittal for prior approval from the Commission. This approach would reduce the unnecessary regulatory burden on licensees.

Option 2 for EAL changes would retain the inconsistency in the regulations, thereby increasing the unnecessary burden on licensees and the NRC staff in addressing questions on a case-by-case basis.

Option 1 (to amend the regulation) for co-located licensees would maintain safety because emergency planning exercises would continue to be required at the frequency which has provided reasonable assurance that the emergency plans can be implemented. The impact of Option 1 on the resources of licensees and offsite authorities would be minimal. Option 1 would reflect what licensees are currently doing and, therefore, there would not be a change in existing acceptable practices. Clarification of the regulatory requirements would modify wording that has resulted in an ambiguous understanding of the requirements. This option would require NRC resources to conduct the rulemaking. The activities and interactions that would test and maintain the interface for co-located licensees and offsite authorities in the period between exercises will provide a consistent expectation and basis for these activities. The level of A&I adequate to maintain an appropriate level of preparedness would be ensured.

The impact of the no rulemaking option (option 2) for the co-located licensee exercise revision on the resources of staff, licensees and offsite authorities would be minimal. However, without clarification of the regulatory requirements, there would be the continued ambiguity in the requirements for future co-located licensee situations. The impact of these continued ambiguities is that potential confusion over requirements would have to be resolved on a case-by-case basis by the staff. This option would not require NRC resources for conducting a rulemaking.

V. Estimation and Evaluation of Values and Impacts

The final amendments modify current requirements in the NRC's approval of changes to EALs and the participation in emergency preparedness exercises for co-located licensees. The change in the requirement for NRC approval of EALs is being made for consistency, and because it reflects current practice. It reflects the Commission's original intent and does not impose a burden on licensees. However, the second change does modify the information collection requirements and impacts the burden on future co-located licensees. Current co-located licensees have implemented an emergency planning training regime consistent with the final rule.

The final amendment requires that future co-located licensees exercise their onsite plans biennially. The offsite authorities would exercise their plans biennially. The interface between offsite plans and the respective onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee. Thus, each co-located licensee will participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the final rule requires any other co-located licensees to participate in activities and interactions with offsite authorities. For the period between exercises, the final rule requires each licensee to conduct emergency preparedness activities and interactions. Likewise each co-located licensee would log the activities and interactions with offsite authorities that are also conducted in the period between exercises. This final rule does not increase the burden on current co-located licensees because they have an emergency planning training regime consistent with the final rule. Future co-located licensees would keep a log of the A&I with offsite authorities which is estimated to average 30 hours per co-located licensee per year.

VI. Presentation of Results

As noted, the impact on a co-located licensee to implement the final rule change is 30 hours per year per co-located licensee. This time would be used to maintain a log of the A&I with offsite authorities. At an assumed average hourly rate of $156/hour, the total industry implementation cost is estimated at $9,360. The cost for an individual co-located licensee is $4,680 per year.

With respect to the EAL rule change, licensees would save staff time by having explicit NRC requirements and guidance that will assist the licensees in the proper submittals of EAL changes. The impact of improved regulations on the NRC is a decrease in the amount of staff time needed to review licensee EAL changes. This is estimated to be about a 100 staff-hour reduction or a $8,000 savings to the NRC per year (assuming a $80 hourly rate for NRC staff time). However, it is uncertain as to how many EAL changes might have been received by the NRC.

There would be several additional benefits associated with these amendments. The greatest would be the increased assurance that the Commission's regulations are consistent and not ambiguous. Further, by addressing these issues generically through rulemaking rather than continuing the current case-by-case approach, it is expected that the burden on the NRC staff would be reduced by several hours for each licensee EAL change as well as future co-located licensees' exercise requirements that NRC would need to approve. Another beneficial attribute to this final action is regulatory efficiency resulting from the expeditious handling of future licensing actions by providing regulatory predictability and stability for the EAL changes as well as the exercise requirements for co-located licensees.

VII. Decision Rationale for Selection of the Final Action

As previously discussed, the additional burdens on a licensee and the NRC are expected to be modest. However, a revision of the requirements is desirable to remove ambiguities in the current regulations while maintaining safety and reducing unnecessary regulatory burden.

VIII. Implementation

The final rule takes effect 90 days after publication in the **Federal Register**.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule would affect only States and licensees of nuclear power plants. These States and licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

(1) NRC Approval of EAL Changes

The final rule, which eliminates the need for NRC approval for certain EAL changes, does not constitute a backfit as defined in § 50.109(a)(1). Although 10 CFR 50.54(q) permits licensees to make changes to their emergency plans which do not decrease the effectiveness of the plans, 10 CFR part 50, appendix E currently requires that all EALs shall be approved by NRC. The final rule clarifies the 10 CFR Part 50, Appendix E requirement to permit licensee changes to EALs without NRC approval if the changes do not decrease the effectiveness of the emergency plan. The final rule requires NRC approval for those EAL changes which decrease the effectiveness of the emergency plan, NRC approval when a licensee proposes to change from one EAL scheme to another as well as proposals of an alternate method for complying with the regulations. The final rule clarifies the requirements and represents the current practice of making changes under § 50.54 (q) requirements and is therefore not a backfit.

In addition, the final rule applies prospectively to changes initiated by licensees. The Commission has indicated in various rulemakings that the Backfit Rule does not protect the prospects of a potential applicant nor does the Backfit Rule apply when a licensee seeks a change in the terms and conditions of its license. A licensee-initiated change to an EAL does not fall within the scope of actions protected by the Backfit Rule and, therefore, the Backfit Rule does not apply to this final rulemaking.

(2) Co-Located Licensee

The amendment that addresses the regulatory ambiguity regarding exercise participation requirements for co-located licensees applies to the existing co-located licensees for the Nine Mile Point and James A. FitzPatrick site and prospectively to future co-located licensees.

With respect to the Nine Mile Point and James A. FitzPatrick licensees, the final rule would arguably constitute a backfit, inasmuch as there is some correspondence between the licensees and the NRC which may be interpreted as constituting NRC approval of ''alternating participation'' by each licensee in a full or partial participation exercise every 2 years. The backfit may not fall within the scope of the compliance exception, 10 CFR 50.109(a)(4)(i), in view of the lack of new information showing that the prior NRC approval of ''alternating participation'' was based upon a factual error or new information not known to the NRC at the time that the NRC approved ''alternating participation.'' However, these licensees have informally been implementing an emergency planning training regime since year 2000 that is consistent with the final rule. Accordingly, the NRC will not prepare a backfit analysis addressing the Nine Mile Point and James A. FitzPatrick licensees.

With respect to future holders of operating licenses (including combined licenses under Part 52) for nuclear power plants which meet the definition of being co-located, the Commission has indicated in various rulemakings that the Backfit Rule does not protect the prospects of a potential applicant.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of Office of Management and Budget (OMB).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATIONS FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), sec. 1704, 112 Stat. 2750 (44 U.S.C 3504 note).

Section 50.7 also issued under Pub. L 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.43 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In appendix E to part 50, paragraphs IV. B and F.2.c are revised, footnote 5 is revised, footnotes 6 through 10 are redesignated as 7 through 11 respectively, and a new footnote 6 is added to paragraph IV.F.2.c to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

IV. Content of Emergency Plans

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B. Assessment Actions

The means to be used for determining the magnitude of, and for continually assessing the impact of, the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These initial emergency action levels shall be discussed and agreed on by the applicant or licensee and state and local governmental authorities, and approved by the NRC. Thereafter, emergency action levels shall be reviewed with the State and local governmental authorities on an annual basis. A revision to an emergency action level must be approved by the NRC before implementation if:

(1) The licensee is changing from one emergency action level scheme to another emergency action level scheme (*e.g.*, a change from an emergency action level scheme based on NUREG–0654 to a scheme based upon NUMARC/NESP–007 or NEI–99–01);

(2) The licensee is proposing an alternate method for complying with the regulations; or

(3) The emergency action level revision decreases the effectiveness of the emergency plan.

A licensee shall submit each request for NRC approval of the proposed emergency action level change as specified in § 50.4. If a licensee makes a change to an EAL that does not require NRC approval, the licensee shall submit, as specified in § 50.4, a report of each change made within 30 days after the change is made.

* * * * *

F. Training

2. * * *

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every 2 years and shall, at least, partially participate [5] in other offsite plan exercises in this period.

If two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the elements defining co-located licensees,[6] each licensee shall:

(1) Conduct an exercise biennially of its onsite emergency plan; and

(2) Participate quadrennially in an offsite biennial full or partial participation exercise; and

(3) Conduct emergency preparedness activities and interactions in the years between its participation in the offsite full or partial participation exercise with offsite authorities, to test and maintain interface among the affected state and local authorities and the licensee. Co-located licensees shall also participate in emergency preparedness activities and interaction with offsite authorities for the period between exercises.

* * * * *

[5] ''Partial participation'' when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; *i.e.*, (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

[6] Co-located licensees are two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the following emergency planning and siting elements:

a. plume exposure and ingestion emergency planning zones,

b. offsite governmental authorities,

c. offsite emergency response organizations,

d. public notification system, and/or

e. emergency facilities

* * * * *

Dated at Rockville, Maryland, this 19th day of January 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–1352 Filed 1–25–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 824

[Docket No. SO–RM–00–01]

RIN 1992–AA28

Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations

AGENCY: Office of Security, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is today publishing a final rule to assist in implementing section 234B of the Atomic Energy Act of 1954. Section 234B makes DOE contractors and their subcontractors subject to civil penalties for violations of DOE rules, regulations and orders regarding the safeguarding and security of Restricted Data and other classified information.

EFFECTIVE DATE: February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Geralyn Praskievicz, Office of Security, SO–1, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4451; JoAnn Williams, Office of General Counsel, GC–53, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6899.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Atomic Energy Act of 1954 and other laws, DOE carries out a variety of national defense and energy research, development and demonstration activities at facilities around the nation that are owned by the United States Government, under the control and custody of DOE, and operated by management and operating contractors under the supervision of DOE. The use of private industry and educational institutions to operate these kinds of facilities, including the national laboratories and their predecessors, dates back to the Atomic Energy Commission, if not to the Manhattan Project. It has allowed the United States to attract the best minds to do the cutting edge scientific, engineering and technical work critical to DOE's national security mission. By its nature, that work involves highly classified information regarding atomic weapons and other weapons of mass destruction; nuclear naval propulsion; intelligence related to terrorism and other topics of great sensitivity. For more than 50 years, DOE, like its predecessor the Atomic Energy Commission, has had to balance two sets of considerations. On the one hand, DOE must attract the best minds that it can to do cutting edge scientific work at the heart of DOE's national security mission, and DOE must permit its operating and management contractors to function in a manner that permits sufficient dissemination of classified work to be put to the various uses that U.S. national security demands. At the same time, it obviously must take all prudent steps to prevent enemies of this nation from gaining access to work that could be used to the detriment, rather than the enhancement, of vital national security interests.

Over the years periodic contractor lapses in adherence to processes designed to safeguard Restricted Data or other classified information have given rise to concerns about the adequacy of efforts by contractors to protect this kind of information. In order to give DOE an additional tool to assure that these processes are being followed, Congress enacted section 234B of the Atomic Energy Act of 1954. This section grants DOE new authority to impose civil penalties for violations of DOE regulations and orders directed to the safeguarding of this kind of information, as well as confirming DOE's preexisting authority to withhold portions of a contractor's fee by reason of poor performance arising out of such violations. DOE had previously promulgated regulations specifying how it would carry out this latter authority, and today's rule specifies the manner in which it will carry out its civil penalty authority. DOE believes that today's regulation will assist in providing greater emphasis on a culture of security awareness in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect classified information of vital significance to this nation. It will also facilitate, encourage and support contractor initiatives for the prompt identification and correction of security problems.

Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) added a new section 234B to the Atomic Energy Act of 1954 (the Act) (42 U.S.C. 2282b). Section 234B has two subsections. The first subsection, subsection a., provides that any person who: (1) Has entered into a contract or agreement with DOE, or a subcontract or subagreement thereto, and (2) violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary of Energy pursuant to the Act relating to the safeguarding or security of Restricted Data or other classified or sensitive information, shall be subject to a civil penalty not to exceed $100,000 for each such violation. The second subsection, subsection b., requires that each DOE contract contain provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information.

DOE elected to implement section 234B in two separate rulemakings, one establishing procedural rules to implement subsection a. similar to the procedural rules to achieve compliance with DOE nuclear safety requirements found at 10 CFR part 820, ''Procedural Rules for DOE Nuclear Activities,'' and the other establishing a procurement clause like the existing clause for conditional payment of fee, profit or incentives, 48 CFR (DEAR) 970.5215–3. On February 1, 2001, DOE published a notice of proposed rulemaking (NOPR) (66 FR 8560) to implement subsection b. of section 234B, concerning reductions in fees or amounts paid to contractors in the event of a security violation. DOE received numerous comments in response to that notice, and responded to them in a notice of interim final rulemaking on December 10, 2003 (68 FR 68771).

On April 1, 2002, DOE published a NOPR at 67 FR 15339 to solicit comments on its proposed framework for an enforcement program for the civil penalty provisions in subsection a. The NOPR requested written comments by July 1, 2002, and invited oral comments at public hearings held in Las Vegas, Nevada on May 22, 2002, and in Washington, DC on May 29, 2002. Written comments were received from eleven sources and oral comments from two. All comments were from representatives of DOE contractors. DOE responds to the major issues raised in comments in part II of this **SUPPLEMENTARY INFORMATION**.

To a large extent, the regulations in this notice of final rulemaking are self-explanatory. There are, however, several fundamental features which were discussed in the NOPR that bear repeating here. DOE will apply civil penalties only to violations of requirements for the protection of classified information. Classified information is defined as ''Restricted Data'' or ''Formerly Restricted Data'' protected against unauthorized disclosure pursuant to the Act and ''National Security Information'' protected against unauthorized disclosure pursuant to Executive Order 12958, as amended on March 25, 2003, or any predecessor or successor order. Although section 234B refers to ''sensitive information,'' DOE does not employ this term in today's final regulations because: (1) Neither the statute nor its legislative history defines the term; (2) There is no commonly accepted definition of ''sensitive information'' within DOE or the Executive Branch; and (3) the legislative history of subsection a. indicates that the Congress was concerned with unauthorized disclosures of classified information. The additional category of unclassified information that might merit inclusion in a regulation imposing civil penalties is Unclassified Controlled Nuclear Information (UCNI), a category of unclassified government information concerning atomic energy defense programs established by section 148 of the Act (42 U.S.C. 2168). However, DOE already has a preexisting regime in place with respect to such information that includes civil penalties. Section 148 provides that any person who violates a regulation or order issued under that section shall be subject to a civil penalty not to exceed $100,000. DOE implemented the provisions of section 148 in regulations contained in 10 CFR part 1017. Since part 1017 already imposes a civil

monetary penalty for unauthorized dissemination of UCNI comparable to the penalty specified in section 234B, DOE determined that it is unnecessary to include UCNI in regulations implementing section 234B.

Today's final regulations permit DOE to assess civil penalties for violations of regulations, rules or orders described in § 824.4 of part 824. These are violations of: (1) 10 CFR part 1016 (''Safeguarding of Restricted Data''); (2) 10 CFR part 1045 (''Nuclear Classification and Declassification''); or (3) any other DOE regulation or rule (including any DOE order or manual enforceable under a contractual provision) related to the safeguarding or security of Restricted Data or other classified information that specifically indicates that violation of its provisions may result in a civil penalty pursuant to section 234B, and (4) compliance orders issued pursuant to part 824.

In addition, section 161 of the Act broadly authorizes DOE to prescribe regulations and issue orders deemed necessary to protect the common defense and security (42 U.S.C. 2201). Consistent with the proposed rule, part 824 implements this authority by providing that the Secretary may issue a compliance order requiring a person to take corrective action if a person by act or omission causes, or creates a risk of, the loss, compromise or unauthorized disclosure of classified information even if that person has not violated a rule or regulation specified in § 824.4(a) of part 824. Violation of the compliance order may also result in the assessment of a civil penalty if the order so specifies. While the recipient of a compliance order may request the Secretary to rescind or modify the compliance order, the request does not stay the effectiveness of the order unless the Secretary issues a new order to that effect. The compliance order provisions in 10 CFR 824.4(b) and (c) are modeled after a similar mechanism in 10 CFR part 820, the rule implementing procedures for section 234A of the Act with respect to nuclear safety.

Today's final rule only applies to contractors and others who have entered into agreements or contracts with DOE or subagreements or subcontracts thereto. This is because subsection a. of section 234B provides that what triggers the availability of a civil penalty is the fact that a ''person * * * has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and * * * violates (or whose employee violates) any applicable rule, regulation or order.'' It is clear from the statutory language, particularly the parenthetical ''or whose employee violates'' that Congress intended contractors and their subcontractors or suppliers to be responsible for the acts or omissions of their employees who fail to observe these rules, regulations, and orders, rather than contemplating the imposition of civil penalties on employees themselves. Consequently, part 824 provides for the assessment of civil penalties against contractors or subcontractors for their employees' actions but not against the employees themselves. The Atomic Energy Act establishes a separate regime of criminal penalties applicable to individuals for the knowing unauthorized communication of Restricted Data. See sections 224 and 227 of the Atomic Energy Act (42 U.S.C. 2274, 2277).

Subsection d. of section 234B sets limitations on civil penalties assessed against certain nonprofit entities specified at subsection d. of section 234A (hereafter the ''named contractors''). For each of the named contractors, the statute provides that no civil penalty may be assessed until the entity enters into a new contract with DOE after October 5, 1999 (the date of enactment) or an extension of a current contract with DOE after October 5, 1999. The statute also limits the total amount of civil penalties assessed against the named contractors in any fiscal year to the total amount of fees paid to that entity in that fiscal year. It should be noted that the limitations applicable to the named contractors also apply to their subcontractors and suppliers regardless of whether they are for-profit or nonprofit.

The fee that represents the cap for civil penalties of nonprofits will be determined pursuant to the provisions of the specific contracts covered by the limitation on nonprofits in section 234B.d.(2).

DOE has decided not to finalize its proposal to cap civil penalties assessed against other DOE contractors that are nonprofit educational institutions under the United States Internal Revenue Code in the same manner as penalties are capped for the named contractors. The statute identifies only the named contractors as those that should receive this treatment. While Congress gave DOE authority to mitigate civil penalties, DOE has concluded that there is not a strong enough case to warrant using that authority in a categorical fashion to cap these penalties without regard to any other consideration for contractor security violations by entities other than those that Congress determined should have their penalties capped in this fashion. Rather, DOE has concluded that its mitigation authority would be better exercised on a case-by-case basis, taking into account all circumstances, both aggravating and extenuating. The final rule and enforcement policy make clear that DOE plans to exercise that authority to mitigate civil penalties based on many considerations, including an entity's financial circumstances. That should be sufficient to ensure that the civil penalty authority is not exercised in a manner that discourages non-profit institutions from seeking DOE contracts. Finally, our decision is consistent with DOE's proposed regulations for 10 CFR part 851 to implement section 234C of the Atomic Energy Act (civil penalties for worker health and safety violations), the most recent legislation providing DOE civil penalty authority.

DOE also has determined on a somewhat different approach from the one in the proposed rule for allocating responsibility among various DOE officials for the performance of certain administrative responsibilities relating to the imposition of civil penalties, including issuance of the preliminary notice of violation, issuance of final notice of violation, and settlement of enforcement actions. DOE's NOPR called for all of these responsibilities to be carried out by the Deputy Secretary on the recommendation of the Director of the Office of Security. DOE has concluded that there is no compelling reason for making the Deputy Secretary responsible for these functions in the first instance. Moreover, DOE believes it is desirable to make the procedures for part 824 consistent with the procedural framework in 10 CFR part 820 (civil penalties for nuclear safety violations) and the proposed part 851 regulations (civil penalties for worker health and safety violations). In both those frameworks, a DOE official subordinate to the Secretary and the Deputy Secretary is the official charged with initiating enforcement and related responsibilities in the case of non-NNSA contractors; in the case of NNSA contractors, the subordinate DOE official makes a recommendation to the NNSA Administrator, who then determines whether or not to accept that recommendation. In the case of a dispute between the responsible DOE official and the NNSA Administrator, the matter may be referred to the Deputy Secretary.

The part 824 rule adopted today adopts a similar framework, under which the Secretary designated a subordinate DOE official to carry out the administrative responsibilities in the case of non-NNSA contractors, but in the case of NNSA contractors this official makes a recommendation to the

NNSA Administrator who decides whether or not to accept that recommendation. If the NNSA Administrator disagrees with the cognizant DOE official's recommendation, and the disagreement cannot be resolved by the two officials, the DOE official may refer the matter to the Deputy Secretary for resolution.

The Secretary of Energy has approved this notice of final rulemaking for publication.

II. DOE's Response to Comments

The following discussion describes the major issues raised in comments, provides DOE's response to these comments, and sets forth or describes any resulting changes to the rule. DOE has also made a few editorial, stylistic and format changes for clarity and consistency, but DOE does not describe them in detail because they do not substantially change the terms of the proposed regulations.

A. Enforcement Policy

A number of commenters argued that DOE's proposed enforcement program under section 234B was deficient in that it lacked an important feature of 10 CFR part 820, a general enforcement policy statement. Without a statement of general enforcement policy, these commenters viewed the proposed regulations as vague and thus susceptible to uneven, or unduly harsh application. Commenters feared that this could mean that a single inadvertent mis-classification of a document might result in a civil penalty.

Based on consideration of these comments, DOE has included in today's final regulations ''Appendix A to Part 824—General Statement of Enforcement Policy,'' which is closely modeled after ''Appendix A to Part 820.'' Appendix A to part 824 includes the following important features of the part 820 model:

1. Severity Levels

Violations of DOE classified information security requirements have varying degrees of security significance. Therefore, the security significance of each violation is to be identified as the first step in the enforcement process. Violations of DOE classified information security requirements are categorized in three levels of severity. These levels are discussed in section V. of appendix A to this part. Table 1.—Severity Level Base Civil Penalties in appendix A provides the base civil penalty amount for each level of violation.

2. Incentives for Both Timely Identification of Potential Noncompliances and Conducting Appropriate Corrective Actions

Many comments were received regarding the overall fairness of the proposed regulations and the need to ensure a consistent and equitable enforcement process.

Appendix A specifically states that DOE's goal in the compliance arena is to enhance and protect the common defense and security at DOE facilities by fostering a culture among both DOE line organizations and contractors that actively seeks not only to attain compliance with DOE classified information security requirements but also to sustain it. The DOE enforcement program and policy has been developed with the express purpose of achieving a culture committed to the best possible security at DOE's facilities. Appendix A sets out substantial incentives to the contractors for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations. Thus, the application of adjustment factors may result in no civil penalty being assessed for violations that are identified, reported and promptly and effectively corrected by the contractor. On the other hand, ineffective programs for problem identification and correction are unacceptable. For example, if a contractor fails to disclose and promptly correct violations of which it should be aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

B. Timing of the Regulations

DOE received several comments that expressed the view that these regulations are premature principally because DOE is imposing new security standards by this rulemaking and contractors deserve additional funding and time to meet these new standards. DOE disagrees with these comments. No new DOE classified information security requirements are being imposed on contractors by these regulations themselves, which only set up the policies and procedures for an enforcement program that may impose civil penalties for requirements established elsewhere.

C. Contract Issues

1. Applicability to Violations Prior to Effective Date

Several comments objected to civil penalties applying to violations that occurred prior to the effective date of these regulations, 30 days after the date of this publication. Paragraph (b) of section 3147 of the National Defense Authorization Act for Fiscal Year 2000 specifically states that ''[s]ubsection a. of section 234B of the Atomic Energy Act * * * applies to any violation after the date of enactment of this Act.'' Congress specified a different effective date for the application of civil penalties against nonprofit contractors listed in section 234A.d. (after entry into a new contract or extension of a current contract), but did not provide a similar limitation with respect to other DOE contractors.

2. Limitation of Liability for Nonprofits

Two issues were raised with respect to the limitation of liability for nonprofits in proposed § 824.2(b). This section would implement subsection d. of section 234B that sets limitations on civil penalties assessed against certain entities specified at subsection d. of section 234A. Some commenters argued that the cap on civil penalties, specifying that the total amount of civil penalties imposed may not exceed the fee for that fiscal year, should apply to all contractors. For reasons similar to those noted above for not finalizing its proposed approach of extending this limitation to all non-profits, DOE has not accepted this position. Rather it has concluded that it should not broaden the category of contractors to whom this limitation applies beyond the specific list identified by Congress. As DOE explained, in all other instances, it will evaluate mitigation on a case-by-case basis taking into account all relevant aggravating and mitigating circumstances.

The second issue relates to the limitation of liability for subcontractors of nonprofit contractors. Consistent with sections 234A. and 234B., today's final regulations provide at § 824.2(b)(1) that the limitations on liability apply to all subcontractors and suppliers, whether for-profit or nonprofit, of the seven named entities working at the named sites specified in subsection d. of section 234A. Commenters have indicated that this list in section 234A.d. is not current in that some of the named sites are no longer operated by the named contractors. Therefore, these commenters argue that the limitations on liability should extend to all subcontractors and suppliers of any contractor at the named sites. DOE rejects this view on the ground that Congress expressly cross-referenced, in section 234B.d., the section 234A.d. list of exceptions and that any change in that list should be accomplished, if at all, by legislative amendment.

3. Relationship With Fee Reduction Regulations

A number of comments expressed the view that DOE needed to clarify the relationship between these regulations and the regulations of DOE's Office of Procurement and Assistance Management that implement paragraph b. of section 234B. That paragraph requires that each DOE contract contain provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation or order relating to the security of classified information. Commenters raising this issue were concerned that contractors might be subjected to both a civil penalty and a reduction in fee for one violation. Congress contemplated this possibility when it enacted both subsections a. and b. of section 234B without a requirement to choose between the two. By contrast, in the later enacted section 234C Congress specifically did require DOE to elect between civil and contractual penalties (*see* section 234C.d.). Consistent with the omission of any such provision in section 234B, today's regulations neither require nor preclude such a choice.

4. Contract Disputes Act

Certain contractors commented in favor of implementing section 234B by using the process and procedures in the Contract Disputes Act, 41 U.S.C. 601–613, rather than the procedures in the proposed rule. In DOE's view, the administration of a system for imposition of civil penalties, as required by a statute, does not fall under the purposes of the Contract Disputes Act. Jurisdiction for agency boards of contract appeals, defined at 41 U.S.C. 607(d), consists only of appeals of contracting officer decisions. Section 234B provides that the powers and limitations applicable to the assessment of civil penalties under section 234A shall apply to the assessment of civil penalties under section 234B. Section 234A gives the Secretary the authority to determine, compromise or modify civil penalties to be imposed under section 234A. after opportunity for an agency hearing pursuant to 5 U.S.C. 554, before an administrative law judge appointed pursuant to 5 U.S.C. 3105. Appeals from these determinations may be made to a U.S. court of appeals.

5. Major Fraud Act

The applicability of the Major Fraud Act, 41 U.S.C. 256(k), to civil penalty proceedings for security violations was raised by commenters who stated that DOE needs to clarify how that Act relates to investigations into suspected or alleged violations of DOE classified information security requirements. They recommended that DOE issue an interpretation stating that as long as a contractor is exempt by statute from the payment of civil penalties, the Major Fraud Act shall not be considered applicable by reason of the ''monetary penalty'' provision of that act. The Major Fraud Act does not make distinctions in its reimbursement prohibitions for different categories of contractors. Even those contractors that are exempt from civil penalties under other statutory or regulatory authority are subject to the reimbursement prohibitions of the Major Fraud Act. In other words, once a government-initiated proceeding has commenced which relates to a violation of, or failure to comply with, a law or regulation, the Act's restrictions apply to investigation proceeding costs, even if the outcome of the proceeding cannot be the actual payment of a monetary penalty. The cost principle at 48 CFR (FAR) 31.205–47, which implements the Act, provides that proceeding costs not made unallowable may be reimbursed, but only to the extent that the amounts of such costs do not exceed 80% of the reasonable and allocable proceeding costs incurred by a contractor.

6. Statute of Limitations

Some commenters argued that without a ''statute of limitations'' a Management and Operating (M&O) contractor might be held liable for the acts or omissions of a former M&O contractor at a DOE site thus nullifying DEAR 970.5231–4 ''Preexisting Conditions'' which currently provides some protection to contractors new to a facility. DOE's experience with Part 820 regarding nuclear safety violations has not indicated that the absence of a ''statute of limitations'' provision is a problem. DOE will adopt a common sense approach in applying Part 824 and not penalize an M&O contractor for the acts or omissions of a predecessor unless the new contractor knows or should reasonably know that a violation exists. Also, one of the provisions in the ''Preexisting Conditions'' clause places a duty on the new contractor to inspect the facility and timely identify to the contracting officer conditions which could give rise to a liability.

D. Applicability

DOE has revised proposed §§ 824.2 (''Applicability'') and 824.3 (''Definitions'') to address comments requesting clarification of the applicability of the regulations. These comments expressed the view that the regulations were vague and overly broad. DOE agrees that more precise language in two places in these two subsections is warranted. One comment pointed out that proposed § 824.2(a) was too broad in that it made the regulations applicable to ''any entity that is subject to DOE security requirements for the protection of classified information.'' This exceeds the authority conferred by the statute, which is limited to contractors and subcontractors of the Department. Section 824.2(a), as published today, tracks the language of section 234B which states that the regulations apply to any person that has entered into a contract or agreement with DOE, or a subcontract or subagreement thereto.

Also, in response to comments raising questions about the applicability of the proposed regulations to the National Nuclear Security Administration (NNSA), § 824.3 now contains a definition of the ''Department of Energy.'' This definition clarifies that these regulations are applicable to contractors of all components of DOE, including the NNSA.

E. Definitions

In addition to adding a definition of the term ''Department of Energy'' discussed in section D of this supplementary information, DOE has made other changes in the definitions in § 824.3, in response to the comments or for purposes of clarification. DOE has revised the definition of the term ''classified information'' in response to a comment to track more clearly the language in the definition of that term in Executive Order 12958, as amended on March 25, 2003. We have deleted the definition of the term ''contractor'' because the term is not actually used in the operational sections of the regulation. Finally, we also have revised the definition of the term ''Director'' and, as revised, the term means ''the DOE Official, or his or her designee, to whom the Secretary has assigned responsibility for enforcement under this part.''

DOE did not accept the comment that the definition of the term ''person'' is too broad in that it includes parents and affiliates of a contractor. Those making this comment argued that extending liability to parents and affiliates goes beyond what is permitted by section 234B and that this extension of liability is unfair. DOE disagrees. The last sentence of the definition of the term ''person'' in § 820.2, the DOE nuclear safety regulations implementing section 234A, states that, for purposes of civil

penalty assessment, the term also includes affiliated entities, such as a parent corporation. Section 234B.c. states that the powers and limitations applicable to the assessment of civil penalties under section 234A, with certain exceptions pertaining to the nonprofit entities identified at subsection d. of that section, shall apply to the assessment of civil penalties under section 234B. Therefore, DOE believes that a broad definition of the term ''person'' is appropriate.

F. Sources of Classified Information Protection Requirements

It was clear to DOE from a number of comments received about the proposed scope of the regulations that DOE should revise § 824.4 (Civil penalties'') to identify more clearly the DOE security requirements covered by these regulations. In response to one comment, DOE has incorporated language that specifies that § 824.4 applies only to acts or omissions related to ''classified information protection'' requirements, rather than security requirements more generally.

DOE agrees with the comment that the reference to 10 CFR part 1046 ''Physical Protection of Security Interests'' should not be included in § 824.4. Section 234B makes civil penalties applicable to classified information protection requirements, not requirements for the DOE protective force, such as medical and physical fitness standards. The two remaining DOE regulations, 10 CFR part 1016 (''Safeguarding of Restricted Data'') and 10 CFR part 1045 (''Nuclear Classification and Declassification'') are the only current DOE regulations containing classified information protection requirements whose violation is a predicate for civil penalties under today's rule.

DOE received one comment that DOE should impose civil penalties only for violations of regulations promulgated in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, and of those DOE orders and other documents in the DOE Directive System specifically identified in the contractor's contract with DOE. Other commenters argued that no civil penalties should arise out of the violation of any classified information protection requirement except a requirement set forth in a DOE regulation. In some cases, the commenters did not indicate why DOE should exclude violations of DOE orders as the grounds for assessing a civil penalty. Commenters who did say why they opposed including DOE orders argued that inclusion: (1) Would make the proposed regulations overly broad; (2) would not provide contractors with adequate notice of what requirements DOE intended to enforce with civil penalties; and (3) would differ from DOE's enforcement policy in 10 CFR part 820 which implements section 234A of the Act with respect to nuclear safety violations.

In the rule adopted today, DOE has revised the language of the proposed rule to clarify the extent to which civil penalties will be imposed for violations of requirements in DOE orders or manuals as well as for violations of compliance orders. Specifically, § 824.4(a) and (b) have been rewritten to read as follows:

Section 824.4 Civil Penalties

(a) Any person who violates a classified information protection requirement of any of the following is subject to a civil penalty under this part:

(1) 10 CFR part 1016—Safeguarding of Restricted Data;

(2) 10 CFR part 1045—Nuclear Classification and Declassification; or

(3) Any other DOE regulation or rule (including any DOE order or manual enforceable against the contractor or subcontractor under a contractual provision in that contractor's or subcontractor's contract) related to the safeguarding or security of classified information if the regulation or rule provides that violation of its provisions may result in a civil penalty pursuant to subsection a. of section 234 B. of the Act.

(b) If, without violating any regulation or rule under paragraph (a) of this section, a person by any act or omission jeopardizes the security of classified information, the Secretary may issue a compliance order to that person requiring that person to take corrective action and notifying the person that violation of the compliance order is subject to a notice of violation and assessment of a civil penalty. If a person wishes to contest that compliance order, the person must file a notice of appeal with the Secretary within 15 days of receipt of the compliance order.''

DOE believes that this approach appropriately carries out the Congressional policy set out in section 234B. Section 234B stressed two considerations in determining whether a civil penalty should be imposed: the status of the entity on whom the penalty might be imposed as a contractor or subcontractor, and the violation by that entity of an ''applicable rule, regulation or order prescribed or otherwise issued by the Secretary pursuant to this Act relating to the safeguarding or security of Restricted Data or other classified information.'' DOE's security orders and manuals are rules within the meaning of the APA (5 U.S.C. 551(4)). In light of these two considerations, DOE believes the statute is best carried out, with respect to orders and directives, by applying it to violations of those that are applicable to the contractor by virtue of its contract and that provide for the imposition of civil penalties, as well as to violations of any applicable regulations.

DOE believes that the revised language should resolve contractor concerns about vagueness and uncertainty as to what are the sources for classified information control requirements that may give rise to violations subject to civil penalties. Certain commenters feared that they might be penalized for violations of verbal, e-mail or other guidance in documents that supplemented DOE orders or manuals. Today's rule makes clear that the contractor will have fair notice since DOE only intends to enforce by civil penalties the provisions of a DOE order or manual enforceable against the contractor under its contract that provides that violations of its classified information protection provisions may result in a civil penalty. DOE considers it the responsibility of its contractors to ''flow down'' to their subcontractors and suppliers the requirements of those orders and directives to which civil penalties apply.

In today's rule, DOE is departing from the practice under 10 CFR part 820 regarding the imposition of civil penalties for of nuclear safety violations. Part 820 limits the scope of penalty-bearing nuclear safety requirements to those published in the CFR or set forth in compliance orders. DOE has not taken the step of departing from the approach taken in part 820 lightly. However, DOE does not believe that it can fully implement the kind of comprehensive security enforcement program that both Congress and DOE believe is required for the protection of sensitive national security interests without inclusion of relevant DOE orders and manuals. In the security area, DOE and its predecessor agencies have historically imposed requirements on contractors by internal directives rather than codified regulations. While more may be done by regulation in the future, the current reality is that many significant DOE security requirements are not promulgated by regulation. To fully carry out the program Congress contemplated in light of the serious security issues that face us today, DOE believes it should include provisions in orders and manuals enforceable against the contractor under its contract that

provide that their violation carries with it the risk of a civil penalty, thereby allowing it to impose civil penalties for such violations in appropriate circumstances.

G. Standard for Violation

Several commenters asserted that the language of proposed § 824.4(b) was too vague and overly broad in that it stated that the Secretary may issue a compliance order if a person by act or omission ''jeopardizes'' the security of classified information. DOE agrees with this comment and has modified that provision to track the language of a comparable provision in part 820. The sentence now states that the Secretary may issue a compliance order if a person by act or omission causes, or creates a risk of, the loss, compromise or unauthorized disclosure of classified information.

DOE did not accept the comment made by a number of contractors that civil penalties should be assessed only if there is actual loss or compromise of classified information, not just the threat of the loss or compromise. DOE believes this takes an overly narrow view of its contractors' and its own obligations to protect classified information. If a contractor by its acts or omissions places classified information at risk, that contractor has already failed to live up to those obligations. To the extent actual compromise is relevant, it is relevant in the context of the exercise of enforcement discretion. As stated in the enforcement policy at appendix A, DOE may exercise that discretion not to assess a civil penalty or to mitigate the civil penalty under appropriate circumstances, when, for example, the contractor self reports and takes corrective actions.

H. Continuing Violations

DOE received several comments asserting that section 234B does not specify that a violation that is a continuing violation must constitute a separate violation for purposes of computing the civil penalty. DOE disagrees. Section 234B.c. cross-references section 234A which provides in subsection a. that if any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. Consistent with subsection b. of section 234A, which is also picked up by section 234B's cross-reference, DOE does have authority to address inequities that may arise from this through its authority to compromise, modify or remit a penalty. It anticipates that it will exercise that authority based on mitigating factors in § 824.13 and the general enforcement policy in appendix A if the contractor exercises due diligence in identifying and correcting security problems. But as an initial matter, under the statutory provision as Congress enacted it, DOE believes that the cross-reference has the effect of defining each day of violation as a separate violation.

DOE also received comments seeking clarification of when a civil penalty will begin, *i.e.*, the date the violation is noticed or first occurred, and when will it end. The civil penalty begins on the date the act or omission that gives rise to the violation first occurred, but in no case before October 5, 1999. It ends when corrective action has been completed.

I. Preliminary Notice of Violation

DOE has revised proposed § 824.5, ''Notice of violation.'' DOE revised the rule to accommodate comments objecting to the use of criminal law enforcement terminology in the preliminary notice of a civil violation. Specifically, commenters objected to the words ''accused'' and ''charged.'' Therefore, the preliminary notice of violation will notify the person of the date, facts, and nature of each act or omission, ''constituting the alleged violation,'' not ''with which the person is charged.'' Section 824.6(d) now refers to a person ''notified of an alleged violation,'' rather than ''accused of a violation.''

In response to numerous comments, DOE has also decided that §§ 824.6 and 824.7 in this final rule should more closely follow the procedures in part 820 with which DOE contractors are familiar. Therefore, DOE has replaced procedures regarding a ''notice of violation'' in proposed § 824.5 with more extensive and detailed procedures regarding a ''preliminary notice of violation'' and a ''final notice of violation'' in §§ 824.6 and 824.7. These sections set forth more precisely the responsibilities of both the agency and the recipient of either type of notice and the effect of various actions by the agency or the recipient.

J. Discovery

The one comment DOE received regarding discovery argued that a contractor should have equal rights with the agency. More specifically, the comment suggested that the authority of the Deputy Secretary to issue subpoenas in § 824.5 should be deleted and that language should be added to § 824.10(d) to provide that the Hearing Officer may issue subpoenas on behalf of the contractor. DOE has accepted this comment with respect to the Hearing Officer's authority, but DOE believes that the officials responsible for the administration of the civil penalty rule also should possess the authority to issue subpoenas since, for example, there may be a need to issue subpoenas in the investigatory stage of a case prior to a hearing. As discussed above in section I, while the NOPR called for the Deputy Secretary to carry out the administrative responsibilities under part 824 in the case of both non-NNSA contractors and NNSA contractors, the final rule makes a subordinate DOE official designated by the Secretary responsible for exercising the rule's procedural functions when non-NNSA contractors are involved, and the Administrator of NNSA, on the recommendation of the Director, responsible for exercising the rule's principal procedural functions when NNSA contractors are involved.

K. Burden of Proof

One comment suggested that DOE revise proposed § 824.7 to make clear that the purpose of the hearing is not for the contractor ''to answer under oath or affirmation'' the allegations. DOE agrees and the proposed section, renumbered § 824.8 now states that any person who receives a final notice of violation under § 824.7 may request a hearing concerning the allegations contained in that notice. Another comment stated that proposed § 824.11(e) should provide that DOE not only has the burden of proving, by a preponderance of the evidence, that a violation has occurred, but also the appropriateness of the amount of the proposed civil penalty. DOE has accepted this comment and revised what is now § 824.12(e) to track the language of 10 CFR part 820.29(d) with which contractors are familiar. Section 824.12(e) now reads as follows:

''DOE has the burden of going forward with and of proving by a preponderance of the evidence that the violation occurred as set forth in the final notice of violation and that the proposed civil penalty is appropriate. The person to whom the final notice of violation has been addressed has the burden of presenting and of going forward with any defense to the allegations set forth in the final notice of violation. Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.''

L. Classified Evidence at the Hearing

One comment objected on due process grounds to language that could be interpreted to mean that the Hearing Officer could exclude pertinent testimony from the hearing if the

testimony is classified. This was not DOE's intent, and DOE has revised proposed § 824.11(d) to clarify how the Hearing Officer is to treat classified information and other information protected from public disclosure by law or regulation. Section 824.12(d) now provides as follows:

''The Hearing Officer must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Hearing Officer may issue such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental initial decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.''

M. Mitigation

Section 824.13 sets out the mitigating factors that the Hearing Officer will consider in determining the amount of the civil penalty. The mitigating factors listed are identical to those in section 234A of the Act, since section 234B provides that, ''the powers and limitations applicable to the assessment of civil penalties under section 234A shall apply.'' DOE has added the general enforcement policy at appendix A to explain further how DOE intends to determine the amount of a civil penalty and what actions a contractor may take to influence that penalty. DOE believes that § 824.13, combined with appendix A, adequately addresses all appropriate mitigation factors. Accordingly, DOE has rejected comments urging that such factors as lack of funding or intentional misconduct of an employee be added to the list in § 824.13.

N. Final Agency Action and Judicial Review

DOE received one comment suggesting that the proposed regulations should be amended to specify clearly when the agency's final action has occurred in order for the contractor to calculate the deadline for seeking judicial review of the agency's action. DOE has revised the regulations to expand and clarify the stages in the enforcement process, including what constitutes a final order enforceable against a person (see §§ 824.7 and 824.13). Additionally, although the proposed regulations provided that judicial review of a Hearing Officer's initial decision would be available only after a party appealed that decision to the Secretary, the final regulations do not provide for a losing party to appeal the Hearing Officer's initial decision to the Secretary. Instead, the regulations permit the Secretary, at his discretion, within thirty days after the Hearing Officer files the initial decision, to review the initial decision and file a final order. If the Secretary does not choose to review the initial decision within 30 days of its filing, then it becomes a final agency action.

O. Miscellaneous

One comment sought clarification as to whether DOE Headquarters and a DOE local office could each assess a penalty for the same offense. Only DOE Headquarters has authority to assess civil penalties.

DOE received one comment asking whether security violations revealed during audits and inspections may give rise to civil penalties. Audits and inspections may form the basis for an allegation or finding of violation under part 824, just as is the case with respect to nuclear safety violations under part 820.

III. Regulatory Review and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. This rulemaking applies principally to large entities who are M&O contractors and establishes procedures but does not itself impose costs on the contractors or subcontractors. Therefore, DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996) imposes on Executive agencies the general duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and to promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that a regulation: (1) Clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of the applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required reviews and has determined that, to the extent allowed by law, the rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has not prepared a family policymaking assessment.

H. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines, and has concluded that is consistent with applicable policies in those guidelines.

I. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

J. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments and the private sector, of $100 million in any single year. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on the energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804.

List of Subjects in 10 CFR Part 824

Government contracts, Nuclear materials, Penalties, Security measures.

Issued in Washington, DC on January 18, 2005.

Glenn S. Podonsky, Director,

Office of Security and Safety Performance Assurance.

■ For the reasons set forth in the preamble, DOE hereby amends chapter III of title 10 of the Code of Federal Regulations by adding a new part 824 as set forth below.

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

Sec.

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*

§ 824.1 Purpose and scope.

This part implements subsections a., c., and d. of section 234B. of the Atomic Energy Act of 1954 (the Act), 42 U.S.C. 2282b. Subsection a. provides that any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation or order under the Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed $100,000 for each violation. Subsections c. and d. specify certain additional authorities and limitations respecting the assessment of such penalties.

§ 824.2 Applicability.

(a) *General.* These regulations apply to any person that has entered into a contract or agreement with DOE, or a subcontract or sub-agreement thereto.

(b) *Limitations.* DOE may not assess any civil penalty against any entity (including subcontractors and suppliers thereto) specified at subsection d. of section 234A of the Act until the entity enters, after October 5, 1999, into a new contract with DOE or an extension of a current contract with DOE, and the total amount of civil penalties may not exceed the total amount of fees paid by the DOE to that entity in that fiscal year.

(c) *Individual employees.* No civil penalty may be assessed against a

person which enters into an agreement with DOE.

§ 824.3 Definitions.

As used in this part:

Act means the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*).

Administrator means the Administrator of the National Nuclear Security Administration.

Classified information means Restricted Data and Formerly Restricted Data protected against unauthorized disclosure pursuant to the Act and National Security Information that has been determined pursuant to Executive Order 12958, as amended March 25, 2003, or any predecessor or successor executive order to require protection against unauthorized disclosure and that is marked to indicate its classified status when in documentary form.

DOE means the United States Department of Energy, including the National Nuclear Security Administration.

Director means the DOE Official, or his or her designee, to whom the Secretary has assigned responsibility for enforcement of this part.

Person means any person as defined in section 11.s. of the Act, 42 U.S.C. 2014, and includes any affiliate or parent corporation thereof, who enters into a contract or agreement with DOE, or is a party to a contract or subcontract under a contract or agreement with DOE.

Secretary means the Secretary of Energy.

§ 824.4 Civil penalties.

(a) Any person who violates a classified information protection requirement of any of the following is subject to a civil penalty under this part:

(1) 10 CFR part 1016—Safeguarding of Restricted Data;

(2) 10 CFR part 1045—Nuclear Classification and Declassification; or

(3) Any other DOE regulation or rule (including any DOE order or manual enforceable against the contractor or subcontractor under a contractual provision in that contractor's or subcontractor's contract) related to the safeguarding or security of classified information if the regulation or rule provides that violation of its provisions may result in a civil penalty pursuant to subsection a. of section 234B. of the Act.

(b) If, without violating a classified information protection requirement of any regulation or rule under paragraph (a) of this section, a person by an act or omission causes, or creates a risk of, the loss, compromise or unauthorized disclosure of classified information, the Secretary may issue a compliance order to that person requiring the person to take corrective action and notifying the person that violation of the compliance order is subject to a notice of violation and assessment of a civil penalty. If a person wishes to contest the compliance order, the person must file a notice of appeal with the Secretary within 15 days of receipt of the compliance order.

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $100,000 for each violation.

(d) If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(e) The Director may enter into a settlement, with or without conditions, of an enforcement proceeding at any time if the settlement is consistent with the objectives of DOE's classified information protection requirements.

§ 824.5 Investigations.

The Director may conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with DOE security requirements specified in § 824.4(a) and (b) and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection, including signing, issuing and serving subpoenas.

§ 824.6 Preliminary notice of violation.

(a) In order to begin a proceeding to impose a civil penalty under this part, the Director shall notify the person by a written preliminary notice of violation sent by certified mail, return receipt requested, of:

(1) The date, facts, and nature of each act or omission constituting the alleged violation;

(2) The particular provision of the regulation, rule or compliance order involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty proposed; and,

(4) The right of the person to submit a written reply to the Director within 30 calendar days of receipt of such preliminary notice of violation.

(b) A reply to a preliminary notice of violation must contain a statement of all relevant facts pertaining to an alleged violation. The reply must:

(1) State any facts, explanations and arguments which support a denial of the alleged violation;

(2) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(3) Discuss the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE;

(4) Furnish full and complete answers to any questions set forth in the preliminary notice; and

(5) Include copies of all relevant documents.

(c) If a person fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(1) The person relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any remedies therein, constitutes a final order.

(d) The Director, at the request of a person notified of an alleged violation, may extend for a reasonable period the time for submitting a reply or a hearing request letter.

§ 824.7 Final notice of violation.

(a) If a person submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the Director must make a final determination whether the person violated or is continuing to violate a classified information security requirement.

(b) Based on a determination by the Director that a person has violated or is continuing to violate a classified information security requirement, the Director may issue to the person a final notice of violation that concisely states the determined violation, the amount of any civil penalty imposed, and further actions necessary by or available to the person. The final notice of violation also must state that the person has the right to submit to the Director, within 30 calendar days of the receipt of the notice, a written request for a hearing under § 824.8 or, in the alternative, to elect the procedures specified in section 234A.c.(3) of the Act, 42 U.S.C. 2282a.c.(3).

(c) The Director must send a final notice of violation by certified mail, return receipt requested, within 30 calendar days of the receipt of a reply.

(d) Subject to paragraphs (h) and (i) of this section, the effect of final notice shall be:

(1) If a final notice of violation does not contain a civil penalty, it shall be deemed a final order 15 days after the final notice is issued.

(2) If a final notice of violation contains a civil penalty, the person must submit to the Director within 30 days after the issuance of the final notice:

(i) A waiver of further proceedings;

(ii) A request for an on-the-record hearing under § 824.8; or

(iii) A notice of intent to proceed under section 234A.c.(3) of the Act, 42 U.S.C. 2282a.(c)(3).

(e) If a person waives further proceedings, the final notice of violation shall be deemed a final order enforceable against the person. The person must pay the civil penalty set forth in the notice of violation within 60 days of the filing of waiver unless the Director grants additional time.

(f) If a person files a request for an on-the-record hearing, then the hearing process commences.

(g) If the person files a notice of intent to proceed under section 234A.c.(3) of the Act, 42 U.S.C. 2282a.(c)(3), the Director, by order, shall assess the civil penalty set forth in the Notice of Violation.

(h) The Director may amend the final notice of violation at any time before the time periods specified in paragraphs (d)(1) or (d)(2) expire. An amendment shall add fifteen days to the time period under paragraph (d) of this section.

(i) The Director may withdraw the final notice of violation, or any part thereof, at any time before the time periods specified in paragraphs (d)(1) or (d)(2) expire.

§ 824.8 Hearing.

(a) Any person who receives a final notice of violation under § 824.7 may request a hearing concerning the allegations contained in the notice. The person must mail or deliver any written request for a hearing to the Director within 30 calendar days of receipt of the final notice of violation.

(b) Upon receipt from a person of a written request for a hearing, the Director shall:

(1) Appoint a Hearing Counsel; and

(2) Select an administrative law judge appointed under section 3105 of Title 5, U.S.C., to serve as Hearing Officer.

§ 824.9 Hearing Counsel.

The Hearing Counsel:

(a) Represents DOE;

(b) Consults with the person or the person's counsel prior to the hearing;

(c) Examines and cross-examines witnesses during the hearing; and

(d) Enters into a settlement of the enforcement proceeding at any time if settlement is consistent with the objectives of the Act and DOE security requirements.

§ 824.10 Hearing Officer.

The Hearing Officer:

(a) Is responsible for the administrative preparations for the hearing;

(b) Convenes the hearing as soon as is reasonable;

(c) Administers oaths and affirmations;

(d) Issues subpoenas, at the request of either party or on the Hearing Officer's motion;

(e) Rules on offers of proof and receives relevant evidence;

(f) Takes depositions or has depositions taken when the ends of justice would be served;

(g) Conducts the hearing in a manner which is fair and impartial;

(h) Holds conferences for the settlement or simplification of the issues by consent of the parties;

(i) Disposes of procedural requests or similar matters;

(j) Requires production of documents; and

(k) Makes an initial decision under § 824.13.

§ 824.11 Rights of the person at the hearing.

The person may:

(a) Testify or present evidence through witnesses or by documents;

(b) Cross-examine witnesses and rebut records or other physical evidence, except as provided in § 824.12(d);

(c) Be present during the entire hearing, except as provided in § 824.12(d); and

(d) Be accompanied, represented and advised by counsel of the person's choosing.

§ 824.12 Conduct of the hearing.

(a) DOE shall make a transcript of the hearing;

(b) Except as provided in paragraph (d) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial or unduly repetitious evidence;

(c) Witnesses shall testify under oath and are subject to cross-examination, except as provided in paragraph (d) of this section;

(d) The Hearing Officer must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Hearing Officer may issue such orders as may be necessary to consider such evidence *in camera* including the preparation of a supplemental initial decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.

(e) DOE has the burden of going forward with and of proving by a preponderance of the evidence that the violation occurred as set forth in the final notice of violation and that the proposed civil penalty is appropriate. The person to whom the final notice of violation has been addressed shall have the burden of presenting and of going forward with any defense to the allegations set forth in the final notice of violation. Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.

§ 824.13 Initial decision.

(a) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact and conclusions regarding all material issues of law, as well as reasons therefor. If the Hearing Officer determines that a violation has occurred and that a civil penalty is appropriate, the initial decision shall set forth the amount of the civil penalty based on:

(1) The nature, circumstances, extent, and gravity of the violation or violations;

(2) The violator's ability to pay;

(3) The effect of the civil penalty on the person's ability to do business;

(4) Any history of prior violations;

(5) The degree of culpability; and

(6) Such other matters as justice may require.

(b) The Hearing Officer shall serve all parties with the initial decision by certified mail, return receipt requested. The initial decision shall include notice that it constitutes a final order of DOE 30 days after the filing of the initial decision unless the Secretary files a Notice of Review. If the Secretary files a notice of Notice of Review, he shall file a final order as soon as practicable after completing his review. The Secretary, at his discretion, may order additional proceedings, remand the matter, or modify the amount of the civil penalty assessed in the initial decision. DOE shall notify the person of the Secretary's action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final order shall pay the full amount of the civil penalty assessed in the final order within thirty days (30) unless otherwise agreed by the Director.

§ 824.14 Special procedures.

A person receiving a final notice of violation under § 824.7 may elect in writing, within 30 days of receipt of

such notice, the application of special procedures regarding payment of the penalty set forth in section 234A.c.(3) of the Act, 42 U.S.C. 2282a(c)(3). The Director shall promptly assess a civil penalty, by order, after the date of such election. If the civil penalty has not been paid within sixty calendar days after the assessment has been issued, the DOE shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty.

§ 824.15 Collection of civil penalties.

If any person fails to pay an assessment of a civil penalty after it has become a final order or after the appropriate District Court has entered final judgment for DOE under § 824.14, DOE shall institute an action to recover the amount of such penalty in an appropriate District Court of the United States.

§ 824.16 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues, serves, or takes the following actions that direct NNSA contractors or subcontractors.

(1) Subpoenas;

(2) Orders to compel attendance;

(3) Disclosures of information or documents obtained during an investigation or inspection;

(4) Preliminary notices of violation; and

(5) Final notices of violations.

(b) The Administrator shall act after consideration of the Director's recommendation. If the Administrator disagrees with the Director's recommendation, and the disagreement cannot be resolved by the two officials, the Director may refer the matter to the Deputy Secretary for resolution.

APPENDIX A TO PART 824—GENERAL STATEMENT OF ENFORCEMENT POLICY

I. Introduction

a. This policy statement sets forth the general framework through which DOE will seek to ensure compliance with its classified information security regulations and rules and classified information security-related compliance orders (hereafter collectively referred to as classified information security requirements).

The policy set forth herein is applicable to violations of classified information security requirements by DOE contractors and their subcontractors (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the classified information security requirements. It is not intended to establish a formulaic approach to the initiation and resolution of situations involving noncompliance with these requirements. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement penalties are appropriate and, if so, the appropriate magnitude of those penalties. DOE reserves the option to deviate from this policy statement when appropriate in the circumstances of particular cases.

b. Both the Department of Energy Organization Act, 42 U.S.C. 7101, and the Atomic Energy Act of 1954 (the Act), 42 U.S.C. 2011, require DOE to protect and provide for the common defense and security of the United States in conducting its nuclear activities, and grant DOE broad authority to achieve this goal.

c. The DOE goal in the compliance arena is to enhance and protect the common defense and security at DOE facilities by fostering a culture among both DOE line organizations and contractors that actively seeks to attain and sustain compliance with classified information security requirements. The enforcement program and policy have been developed with the express purpose of achieving a culture of active commitment to security and voluntary compliance. DOE will establish effective administrative processes and incentives for contractors to identify and report noncompliances promptly and openly and to initiate comprehensive corrective actions to resolve both the noncompliances themselves and the program or process deficiencies that led to noncompliance.

d. In the development of the DOE enforcement policy, DOE believes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious security incidents. This can be accomplished by providing greater emphasis on a culture of security awareness in existing DOE operations and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect classified information of vital significance to this nation. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. These initiatives and activities will be duly considered in exercising enforcement discretion.

e. Section 234B of the Act provides DOE with the authority to impose civil penalties and also with the authority to compromise, modify, or remit civil penalties with or without conditions. In implementing section 234B, DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate judgment in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of security vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of security requirements to nuclear facilities and by promoting and coordinating the proper contractor attitude toward complying with those requirements.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the common defense and security of the United States by:

a. Ensuring compliance by DOE contractors with applicable classified information security requirements.

b. Providing positive incentives for a DOE contractor's:

(1) Timely self-identification of security deficiencies,

(2) Prompt and complete reporting of such deficiencies to DOE,

(3) Root cause analyses of security deficiencies,

(4) Prompt correction of security deficiencies in a manner which precludes recurrence, and

(5) Identification of modifications in practices or facilities that can improve security.

c. Deterring future violations of DOE requirements by a DOE contractor.

d. Encouraging the continuous overall improvement of operations at DOE facilities.

III. Statutory Authority

Section 234B of the Act subjects contractors, and their subcontractors and suppliers, to civil penalties for violations of DOE regulations, rules and orders regarding the safeguarding and security of Restricted Data and other classified information.

IV. Procedural Framework

a. 10 CFR part 824 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of notices of violation and the resolution of contested enforcement actions in the event a DOE contractor elects to adjudicate contested issues before an administrative law judge.

b. Pursuant to 10 CFR part 824.6, the Director initiates the civil penalty process by issuing a preliminary notice of violation that specifies a proposed civil penalty. The DOE contractor is required to respond in writing to the preliminary notice of violation, either admitting the violation and waiving its right to contest the proposed civil penalty and paying it; admitting the violation, but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty; or denying that the violation has occurred and providing the basis for its belief that the preliminary notice of violation is incorrect. After evaluation of the DOE's contractor response, the Director may determine that no violation has occurred; that the violation occurred as alleged in the preliminary notice of violation, but that the proposed civil penalty should be remitted in whole or in part; or that the violation occurred as alleged in the preliminary notice of violation and that the proposed civil penalty is appropriate notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director will issue a final notice of violation or a final notice of violation with proposed civil penalty.

c. An opportunity to challenge a proposed civil penalty either before an administrative law judge or in a United States District Court is provided in 42 U.S.C. 2282a(c). Part 824 sets forth the procedures associated with an administrative hearing, should the contractor opt for that method of challenging the proposed civil penalty.

V. Severity of Violations

a. Violations of classified information security requirements have varying degrees of security significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Violations of classified information security requirements are categorized in three levels of severity to identify their relative security significance. Notices of violation are issued for noncompliance and propose civil penalties commensurate with the severity level of the violation(s) involved.

b. Severity Level I has been assigned to violations that are the most significant and Severity Level III violations are the least significant. Severity Level I is reserved for violations of classified information security requirements which involve actual or high potential for adverse impact on the national security. Severity Level II violations represent a significant lack of attention or carelessness toward responsibilities of DOE contractors for the protection of classified information which could, if uncorrected, potentially lead to an adverse impact on the national security. Severity Level III violations are less serious, but are of more than minor concern: *i.e.*, if left uncorrected, they could lead to a more serious concern. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

c. Isolated minor violations of classified information security requirements will not be the subject of formal enforcement action through the issuance of a notice of violation. However, these minor violations will be identified as noncompliances and tracked to assure that appropriate corrective/remedial action is taken to prevent their recurrence, and evaluated to determine if generic or specific problems exist. If circumstances demonstrate that a number of related minor noncompliances have occurred in the same time frame (*e.g.*, all identified during the same assessment), or that related minor noncompliances have recurred despite prior notice to the DOE contractor and sufficient opportunity to correct the problem, DOE may choose in its discretion to consider the noncompliances in the aggregate as a more serious violation warranting a Severity Level III designation, a notice of violation and a possible civil penalty.

d. The severity level of a violation will depend, in part, on the degree of culpability of the DOE contractor with regard to the violation. Thus, inadvertent or negligent violations will be viewed differently from those in which there is gross negligence, deception or willfulness. In addition to the significance of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of the person involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the severity level of a violation and proposed civil penalty, the lack of such involvement will not constitute grounds to reduce the severity level of a violation or mitigate a civil penalty. Allowance of mitigation in such circumstances could encourage lack of management involvement in DOE contractor activities and a decrease in protection of classified information.

e. Other factors which will be considered by DOE in determining the appropriate severity level of a violation are the duration of the violation, the past performance of the DOE contractor in the particular activity area involved, whether the DOE contractor had prior notice of a potential problem, and whether there are multiple examples of the violation in the same time frame rather than an isolated occurrence. The relative weight given to each of these factors in arriving at the appropriate severity level will depend on the circumstances of each case.

f. DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the severity level of a violation involving either failure to make a required report or notification to DOE or an untimely report or notification will be based upon the significance of, and the circumstances surrounding, the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was actually aware or should have been aware of the condition or event which it failed to report.

VI. Enforcement Conferences

a. Should DOE determine, after completion of all assessment and investigation activities associated with a potential or alleged violation of classified information security requirements, that there is a reasonable basis to believe that a violation has actually occurred, and the violation may warrant a civil penalty, DOE will normally hold an enforcement conference with the DOE contractor involved prior to taking enforcement action. DOE may also elect to hold an enforcement conference for potential violations which would not ordinarily warrant a civil penalty but which could, if repeated, lead to such action. The purpose of the enforcement conference is to assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based, discuss the potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE contractor's corrective actions, determine whether there are any aggravating or mitigating circumstances, and obtain other information which will help determine the appropriate enforcement action.

b. DOE contractors will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid pre-decisional discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of the national security, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VII. Enforcement Letter

a. In cases where DOE has decided not to issue a notice of violation, DOE may send an enforcement letter to the contractor signed by the Director. The enforcement letter is intended to communicate the basis of the decision not to pursue further enforcement action for a noncompliance. The enforcement letter is intended to point contractors to the desired level of security performance. It may be used when the Director concludes the specific noncompliance at issue is not of the level of significance warranted for issuance of a notice of violation. The enforcement letter will typically describe how the contractor handled the circumstances surrounding the noncompliance and address additional areas requiring the contractor's attention and DOE's expectations for corrective action. The enforcement letter notifies the contractor that, when verification is received that corrective actions have been implemented, DOE will close the enforcement action. In the case of NNSA contractors or subcontractors, the enforcement letter will take the form of advising the contractor or subcontractor that the Director has consulted with the NNSA Administrator who agrees that further enforcement action should not be pursued if verification is received that corrective actions have been implemented by the contractor or subcontractor.

b. In many investigations, an enforcement letter may not be required. When DOE decides that a contractor has appropriately corrected a noncompliance or that the significance of the noncompliance is sufficiently low, it may close out an investigation without such enforcement letter. A closeout of a noncompliance with or without an enforcement letter may only take place after the Director has issued a letter confirming that corrective actions have been completed. In the case of NNSA contractors or subcontractors, the Director's letter will take the form of confirming that corrective actions have been completed and advising that the Director has consulted with the NNSA Administrator who agrees that no enforcement action should be pursued.

VIII. Enforcement Actions

The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a notice of violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation.

1. Notice of Violation

a. A Notice of Violation (preliminary or final) is a document setting forth the conclusion that one or more violations of classified information security requirements have occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in Section IV of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe corrective

steps which have been taken and the results achieved; remedial actions which will be taken to prevent recurrence; and the date by which full compliance will be achieved.

b. DOE will use the notice of violation as the standard method for formalizing the existence of a possible violation and the notice of violation will be issued in conjunction with the proposed imposition of a civil penalty. In certain limited instances, as described in this section, DOE may refrain from the issuance of an otherwise appropriate notice of violation. However, a notice of violation normally will be issued for willful violations, for violations where past corrective actions for similar violations have not been sufficient to prevent recurrence and there are no other mitigating circumstances.

c. DOE contractors are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with classified information security requirements. Should a contractor believe that a shortage of funding precludes it from achieving compliance with one or more of these requirements, it may request, in writing, an exemption from the requirement(s) in question from the appropriate Secretarial Officer (SO). If no exemption is granted, the contractor, in conjunction with the SO, must take appropriate steps to modify, curtail, suspend or cease the activities which cannot be conducted in compliance with the classified information security requirement(s) in question.

d. DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all classified information security requirements. Therefore, contractors normally will be held responsible for the acts or omissions of their employees and subcontractor employees in the conduct of activities at DOE facilities.

2. Civil Penalty

a. A civil penalty is a monetary penalty that may be imposed for violations of applicable classified information security requirements, including compliance orders. Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE contractor self-identification, reporting and correction of violations.

b. Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in this section, civil penalties will be proposed for Severity Level I and II violations. Civil penalties also will be proposed for Severity Level III violations which are similar to previous violations for which the contractor did not take effective corrective action. ''Similar'' violations are those which could reasonably have been expected to have been prevented by corrective action for the previous violation. DOE normally considers civil penalties only for similar Severity Level III violations that occur over an extended period of time.

c. DOE will impose different base level civil penalties considering the severity level of the violation(s). Table 1 shows the daily base civil penalties for the various categories of severity levels. However, as described in Section V, the imposition of civil penalties will also take into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge.

d. Regarding the factor of ability of DOE contractors to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty is such that it puts a DOE contractor out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate a contractor's management of a DOE facility. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account. However, DOE will evaluate the relationship of entities affiliated with the contractor (such as parent corporations) when it asserts that it cannot pay the proposed penalty.

e. DOE will review each case involving a proposed civil penalty on its own merit and adjust the base civil penalty values upward or downward appropriately. As indicated in paragraph 2.c of this section, Table 1 identifies the daily base civil penalty values for different severity levels. After considering all relevant circumstances, civil penalties may be escalated or mitigated based upon the adjustment factors described below in this section. In no instance will a civil penalty for any one violation exceed the $100,000 statutory limit per violation. However, it should be noted that if a violation is a continuing one, under the statute, each day the violation continued constitutes a separate violation for purposes of computing the civil penalty. Thus, the per violation cap will not shield a DOE contractor that is or should have been aware of an ongoing violation and has not reported it to DOE and taken corrective action despite an opportunity to do so from liability significantly exceeding $100,000. Further, as described in this section, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE 1.—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (percentage of maximum civil penalty per violation per day)
I	100
II	50
III	10

3. Adjustment Factors

a. DOE's enforcement program is not an end in itself, but a means to achieve compliance with classified information security requirements, and civil penalties are not assessed for revenue purposes, but rather to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage early identification and reporting of security deficiencies and violations of classified information security requirements by the DOE contractors themselves rather than by DOE, and the prompt correction of any deficiencies and violations so identified. With respect to their own practices and those of their subcontractors, DOE believes that DOE contractors are in the best position to identify and promptly correct noncompliance with classified information security requirements. DOE expects that these contractors should have in place internal compliance programs which will ensure the detection, reporting and prompt correction of security-related problems that may constitute, or lead to, violations of classified information security requirements before, rather than after, DOE has identified such violations. Thus, DOE contractors are expected to be aware of and to address security problems before they are discovered by DOE. Obviously, protection of classified information is enhanced if deficiencies are discovered (and promptly corrected) by the DOE contractor, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of classified information security-related problems by DOE contractors can also have the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with other appropriate DOE contractors.

b. Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations of classified information security requirements. Thus, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE contractor.

c. On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

d. Further, in cases involving factors of willfulness, repeated violations, patterns of systematic violations, flagrant DOE-identified violations or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted. Based on the degree of such factors, DOE may escalate the amount of civil penalties up to the statutory

maximum of $100,000 per violation per day for continuing violations.

4. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Table 1 may be given when a DOE contractor identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE contractor does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with classified information security requirements or place the facility or operation in a safe configuration are not taken.

5. Self-Identification and Tracking Systems

a. DOE strongly encourages contractors to self-identify noncompliances with classified information security requirements before the noncompliances lead to a string of similar and potentially more significant events or consequences. When a contractor identifies a noncompliance through its own self-monitoring activity, DOE will normally allow a reduction in the amount of civil penalties, regardless of whether prior opportunities existed for contractors to identify the noncompliance. DOE normally will not allow a reduction in civil penalties for self-identification if DOE intervention was required to induce the contractor to report a noncompliance.

b. Self-identification of a noncompliance is possibly the single most important factor in considering a reduction in the civil penalty amount. Consideration of self-identification is linked to, among other things, whether prior opportunities existed to discover the violation, and if so, the age and number of such opportunities; the extent to which proper contractor controls should have identified or prevented the violation; whether discovery of the violation resulted from a contractor's self-monitoring activity; the extent of DOE involvement in discovering the violation or in prompting the contractor to identify the violation; and the promptness and completeness of any required report. Self-identification is also considered by DOE in deciding whether to pursue an investigation.

6. Self-Disclosing Events

a. DOE expects contractors to demonstrate acceptance of responsibility for security of classified information and to pro-actively identify noncompliance conditions in their programs and processes. In deciding whether to reduce any civil penalty proposed for violations revealed by the occurrence of a self-disclosing event (*e.g.* belated discovery of the disappearance of classified information or material subject to accountability rules), DOE will consider the ease with which a contractor could have discovered the noncompliance, *i.e.* failure to comply with classified information accountability rules, that contributed to the event and the prior opportunities that existed to discover the noncompliance. When the occurrence of an event discloses noncompliances that the contractor could have or should have identified before the event, DOE will not generally allow a reduction in civil penalties for self-identification. If a contractor simply reacts to events that disclose potentially significant consequences or downplays noncompliances which did not result in significant consequences, such contractor actions do not lead to the improvement in protection of classified information contemplated by the Act.

b. The key test is whether the contractor reasonably could have detected any of the underlying noncompliances that contributed to the event. Failure to utilize events and activities to address noncompliances may result in higher civil penalty assessments or a DOE decision not to reduce civil penalty amounts.

7. Corrective Action To Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE contractor takes corrective action, including actions to identify root causes and prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty shown in Table 1. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation or corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

8. DOE's Contribution to a Violation

There may be circumstances in which a violation of a classified information security requirement results, in part or entirely, from a direction given by DOE personnel to a DOE contractor to either take, or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing a notice of violation, and may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that no interpretation of a classified information security requirement is binding upon DOE unless issued in writing by the General Counsel. Further, as discussed in this section of this policy statement, lack of funding by itself will not be considered as a mitigating factor in enforcement actions.

9. Exercise of Discretion

Because DOE wants to encourage and support DOE contractor initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

a. In accordance with the previous discussion, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

(1) The violation is promptly identified and reported to DOE before DOE learns of it;

(2) The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation;

(3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation; and

(4) The DOE contractor has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

b. DOE may refrain from proposing a civil penalty for a violation involving a past problem that meets all of the following criteria:

(1) It was identified by a DOE contractor as a result of a formal effort such as an annual self assessment that has a defined scope and timetable which is being aggressively implemented and reported;

(2) Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and

(3) It was not likely to be identified by routine contractor efforts such as normal surveillance or quality assurance activities.

c. DOE will not issue a notice of violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

d. DOE may refrain from issuing a notice of violation for an act or omission constituting noncompliance that meets all of the following criteria:

(1) It was promptly identified by the contractor;

(2) It is normally classified at a Severity Level III;

(3) It was promptly reported to DOE;

(4) Prompt and appropriate corrective action will be taken, including measures to prevent recurrence; and

(5) It was not a willful violation or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

e. DOE may refrain from issuing a notice of violation for an act or omission constituting noncompliance that meets all of the following criteria:

(1) It was an isolated Severity Level III violation identified during an inspection or evaluation conducted by the Office of Independent Oversight and Performance Assurance, or a DOE security survey, or during some other DOE assessment activity;

(2) The identified noncompliance was properly reported by the contractor upon discovery;

(3) The contractor initiated or completed appropriate assessment and corrective actions within a reasonable period, usually before the termination of the onsite inspection or integrated performance assessment; and

(4) The violation was not willful or one which could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

f. In situations where corrective actions have been completed before termination of an inspection or assessment, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the noncompliance issue and any corrective actions can be properly tracked and monitored.

g. If DOE initiates an enforcement action for a violation at a Severity Level II or III and, as part of the corrective action for that violation, the DOE contractor identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE contractor acted reasonably and in a timely manner appropriate to the security significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the security significance or character of the concern arising out of the initial violation.

h. The preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or notice of violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

[FR Doc. 05–1303 Filed 1–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NE–11–AD; Amendment 39–13922; AD 2004–26–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland (RRD) (Formerly Rolls-Royce, plc) Tay 611–8, Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2004–26–10. That AD applies to certain RRD Tay 611–8, Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 turbofan engines with ice-impact panels installed in the low pressure (LP) compressor case. That AD was published in the **Federal Register** on January 6, 2005 (70 FR 1172). This document corrects the same service bulletin paragraph number reference in 17 locations of the compliance section. This document also corrects an inspection limit and a service bulletin number in the compliance section. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective January 26, 2005.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments AD, FR Doc. 05–40, that applies to certain RRD Tay 611–8, Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 turbofan engines with ice-impact panels installed in the low pressure (LP) compressor case, was published in the **Federal Register** on January 6, 2005 (70 FR 1172). The following corrections are needed:

§ 39.13 [Corrected]

■ On page 1174, in the third column, in paragraph (f)(1), ''paragraph 3.E.'' is corrected to read ''paragraphs 3.C. through 3.E''.

■ On page 1175, in the first column, in paragraphs (f)(2), (g)(1), (g)(2), (g)(3), (j)(1), and (j)(2), ''paragraph 3.E'' is corrected to read ''paragraphs 3.C. through 3.E'' in six locations.

■ On page 1175, in the second column, in paragraphs (k)(1), (k)(2), (k)(3), (n)(2), and (o)(1), ''paragraph 3.E'' is corrected to read ''paragraphs 3.C. through 3.E'' in five locations.

■ On page 1175, in the third column, in paragraphs (o)(2), (p)(1), (p)(2), (p)(3), and (s)(2), ''paragraph 3.E'' is corrected to read ''paragraphs 3.C. through 3.E'' in five locations.

■ On page 1175, in the third column, in paragraph (s)(1), ''3,000 CSLI'' is corrected to read ''3,000 hours-since-last-inspection''.

■ On page 1175, in the third column, in paragraph (s)(2), ''TAY–72–1638'' is corrected to read ''TAY–72–1639''.

Issued in Burlington, MA, on January 19, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–1392 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19577; Airspace Docket No. 04–ACE–67]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Finale rule.

SUMMARY: This rule establishes a Class E surface area at Independence, KS. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Independence, KS by enlarging the area to meet airspace requirements for diverse departures from Independence Municipal Airport and by correcting discrepancies in the Independence Municipal Airport airport reference point (ARP).

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Independence Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, November 30, 2004, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify other Class E airspace at Independence, KS (69 FR 69554). The proposal was to establish a Class E surface area at Independence, KS. It was also to modify the Class E5 airspace and its legal description by enlarging the area to protect for diverse departures from the Independence Municipal

Airport and by revising the Independence Municipal Airport ARP used in the Class E airspace legal description. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace designated as a surface area for an airport at Independence, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Independence Municipal Airport. Weather observations will be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications will be direct with Kansas City Air Route Traffic Control Center.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Independence, KS. An examination of this Class E airspace area revealed it does not comply with airspace requirements for diverse departures from Independence Municipal Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also revealed discrepancies in the Independence Municipal Airport ARP used in the airspace legal description. This action corrects these anomalies. The areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Independence Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Independence, KS

Independence Municipal Airport, KS
(Lat. 37°09′30″ N., long. 95°46′42″ W.)

Within a 4.6-mile radius of Independence Municipal Airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Independence, KS

Independence Municipal Airport, KS
(Lat. 37°09′30″ N., long. 95°46′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Independence Municipal Airport.

* * * * *

Issued in Kansas City, MO, on January 11, 2005.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–1405 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19578; Airspace Docket No. 04–ACE–68]

Establishment of Class E2 Airspace; Lawrence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Lawrence, KS. The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Lawrence Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, November 30, 2004, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area at Lawrence, KS (69 FR 69556). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace designated as a surface area for an airport at Lawrence, KS. Controlled airspace extending upward from the

surface of the earth is needed to contain aircraft executing instrument approach procedures to Lawrence Municipal Airport. Weather observations will be provided by an Automated Surface Observing System (ASOS) and communications will be direct with Kansas City Air Route Traffic Control Center. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rules is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient user of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Lawrence Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Lawrence, KS

Lawrence Municipal Airport, KS
(Lat. 39°00′40″ N., long. 95°13′00″ W.)

Within a 4-mile radius of Lawrence Municipal Airport and within 1.2 miles each side of the 333° bearing from the airport extending from the 4-mile radius to 4.2 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on January 11, 2005.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–1408 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19334; Airspace Docket No. 04–ACE–63]

Modification of Class E Airspace; Sedalia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, October 29, 2004, (69 FR 63056) (FR Doc. 04–24259). It corrects errors in the legal description of the Class E airspace area extending upward from 700 feet above the surface at Sedelia, MO.

DATES: The direct final rule is effective on 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 04–24259, published on Friday, October 29, 2004 (69 FR 63056), modified the Class E airspace area extending upward from 700 feet above the surface at Sedalia, MO. The modification expanded the airspace area for diverse departures and modified or deleted extensions to the airspace area to provide controlled airspace of appropriate dimensions for aircraft executing instrument approach procedures to Sedalia Memorial Airport. The Sedalia Memorial Airport airport reference point (ARP) is used in the airspace legal description. However, publication of a revised Sedalia Memorial Airport ARP in the National Flight Data Digest on January 6, 2005, requires a further revision to the Sedalia, MO Class E airspace area.

Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area extending upward from 700 feet above the surface at Sedalia, MO, as published in the **Federal Register** on Friday, October 29, 2004, (69 FR 63056) (FR Doc. 04–24259) is corrected as follows:

§ 71.1 [Corrected]

■ On page 63057, Column 3, fifth paragraph, third line, change ''(Lat. 38°42′25″; N., long. 93°10′34″ W.)'' to read: ''(Lat. 38°42′27″; N., long. 93°10′33″ W.)''

Issued in Kansas City, MO, on January 11, 2005.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–1420 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA78

Offset of Tax Refund Payments To Collect State Income Tax Obligations

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Under provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, the Federal tax refund of a taxpayer who owes a past-due, legally enforceable State income tax obligation may be reduced, or offset, by the amount owed by the taxpayer. The funds offset from the taxpayer's Federal tax refund are forwarded to the State that reported the past-due State income tax obligation. On December 20, 1999, the U.S. Department of the Treasury's Financial Management Service (FMS) published a notice of proposed rulemaking in the **Federal Register** by cross-reference to an interim rule published in the **Federal Register** on the same day. This final rule adopts the interim rule without change.

DATES: This rule is effective January 26, 2005.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6660; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874–6680. A copy of this final rule is being made available for downloading from the Financial Management Service Web site at the following address: *http://www.fms.treas.gov/debt.*

SUPPLEMENTARY INFORMATION:

Background

The Internal Revenue Code authorizes the Secretary of the Treasury to offset Federal tax refund payments to satisfy debts owed to the United States and to collect past-due support for States. Under the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685, 779 (1998), the authority to offset tax refund payments was amended to allow for the offset of Federal tax refund payments to collect past-due, legally enforceable State income tax obligations reported to the Secretary of the Treasury by States. The amendments authorizing such offsets were effective January 1, 2000.

Offsets to collect delinquent State income tax debts from Federal tax refunds are processed through the Treasury Offset Program (TOP), which is operated by FMS, the disbursing office for the Treasury Department. TOP is a centralized offset program through which FMS offsets tax refund payments, as well as other nontax Federal payments, to collect delinquent debts owed to Federal agencies and States. This rule governs only the offset of one type of payment (*i.e.*, tax refunds) to pay one type of delinquent debt (*i.e.*, past-due, legally enforceable State income tax obligations).

On December 20, 1999, FMS published a notice of proposed rulemaking, 64 FR 71233 (NPRM), concerning the offset of tax refunds to collect delinquent income tax obligations owed to States. On the same day, FMS published an interim rule with request for comments, 64 FR 71228, which contained the text for the NPRM. The closing date for comments regarding the proposed and interim rules was January 19, 2000.

Comments on the Proposed and Interim Rules

FMS did not receive any comments on the NPRM by the close of the comment period. Likewise, FMS did not receive any comments on the interim rule, which served as the text for the NPRM. Therefore, the interim rule is adopted, without change, as a final rule.

Regulatory Analysis

This final rule is not a significant regulatory action as defined in Executive Order 12866. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that this rule only assists States in the collection of past-due legally enforceable State income tax debt. Therefore, a regulatory flexibility analysis is not required.

Special Analysis

FMS has determined that good cause exists to make this final rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, FMS has been collecting past-due income tax obligations owed to States by tax refund offset since January 2000. Procedures affecting States submitting delinquent income tax obligations for collection and persons owing delinquent income tax obligations to States remain substantially unchanged. This final rule provides important guidance that is expected to facilitate States' participation in the tax refund offset program. Therefore, FMS believes that good cause exists to make the rule effective upon publication.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

Adoption as Final Rule

■ Accordingly, the interim rule adding § 285.8 to 31 CFR part 285, subpart A, which was published at 64 FR 71228 on December 20, 1999, is adopted as a final rule without change.

Dated: January 21, 2005.

Richard L. Gregg,

Commissioner.

[FR Doc. 05–1421 Filed 1–25–05; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD07–04–090]

RIN 1625–AA11, 1625–AA87, 1625–AA01

Regulated Navigation Areas, Security Zones, and Temporary Anchorage Areas; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a series of temporary regulated navigation areas, security zones and temporary anchorage areas on the St. Johns River, Jacksonville, FL, from Winter Point to the Intracoastal Waterway, for Super Bowl XXXIX activities and events. The river will be divided into two regulated navigation areas and four security zones in order to provide increased layered security in close proximity to the downtown area of the river. Additionally, the size of existing fixed security zones around docked cruise ships will be increased. Existing anchorage grounds will be modified and temporary anchorages will be added to accommodate the vessel traffic expected during the Super Bowl events. The regulated navigation areas, security zones and temporary anchorages are necessary to protect national security interests and the safety of navigation during Super Bowl events. These areas will be enforced at various designated time periods beginning February 2, 2005, through February 7, 2005. Entry into the security zones will be prohibited to all persons and vessels unless authorized by the Coast Guard Captain of the Port Jacksonville or his designated representatives.

DATES: This rule is effective from February 2, 2005, through February 7, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD07–04–090 and are available for inspection or copying at Coast Guard Marine Safety Office Jacksonville between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James Tedtaotao at Coast Guard Marine Safety Office Jacksonville, FL, tel: (904) 232–2640 ext 111.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 10, 2004, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Areas, Security Zones, and Temporary Anchorage Areas; St. Johns River, Jacksonville, FL in the **Federal Register** (Volume 69, Number 237). We received one letter commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest because the events will take place less than 30 days after publication and immediate action is needed to minimize potential danger to the public, port and waterways. There is significant national security interest during the Super Bowl in protecting the waterways surrounding downtown Jacksonville, cruise ships, nearby vessels, and the public from destruction, loss, or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

Background and Purpose

In light of terrorist attacks on New York City and the Pentagon in Arlington, VA, on September 11, 2001, and the continuing concern for future terrorist and or subversive acts against the United States, especially at high visibility events where a large number of persons are likely to congregate, the Coast Guard is establishing temporary regulated navigation areas and security zones in certain waters of the St. Johns River.

The Super Bowl is a sporting event, hosted each year in a different city in the United States, sponsored by the National Football League (NFL). Super Bowl XXXIX will be held in Jacksonville, FL, on Sunday, February 6, 2005, at ALLTEL Stadium. Security measures for Super Bowl XXXIX and the events preceding it, including temporary regulated navigation areas, security zones and anchorages designated herein, are necessary from February 2, 2005, to February 7, 2005, and are needed to safeguard the maritime transportation infrastructure, the public, and designated participants from potential acts of violence or terrorism during Super Bowl XXXIX activities.

The planning for these regulated navigation areas and security zones has been conducted in conjunction with federal, state and local law enforcement agencies. There is significant national security interest during the Super Bowl in protecting the waterways surrounding downtown Jacksonville, cruise ships, nearby vessels, and the public from destruction, loss, or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

These regulations amend existing security zones established at 33 CFR § 165.759 to increase the fixed security zones around cruise ships docked at the Talleyrand Marine Terminal and the Jacksonville Cruise Ship Passenger Terminal from 100 yards to 400 yards.

These regulations also amend existing anchorage regulations established at 33 CFR 110.183 by removing Anchorage A, modifying Anchorage B, and establishing various temporary anchorages marked by buoys. Some of the temporary anchorages will be exclusively for use by small recreational vessels and others will be for larger recreational vessels and commercial vessels.

Discussion of Comments and Changes

Coast Guard Marine Safety Office Jacksonville received one letter comment in response to the notice of proposed rulemaking. The letter requested clarification on the procedures by which permission to remain within a security zone by a vessel already in the zone when it becomes effective is requested from the Captain of the Port. The inquiry was addressed by telephone and the procedures described in paragraph (c)(2) of proposed § 165.T07–090 were explained. Additionally, a minor modification to the text of the temporary final rule was made.

This temporary final rule will incorporate the following changes to the proposed rule:

(1) *Security Zones*: The proposed rule explained how vessels or persons desiring to enter or transit the security zones could seek permission from the Captain of the Port or his designated representatives on VHF Channel Marine 12, but did not give a corresponding instruction for vessels or persons desiring to remain when located within a zone at the time it becomes effective. This temporary final rule contains a clarifying sentence to include the instruction that vessels or persons within a security zone when it becomes effective may contact the Coast Guard Captain of the Port or his designated representatives on VHF Channel Marine 12 to seek permission to remain in the security zone.

(2) *Anchorage Regulations*: The proposed rule added new paragraph (c) to existing anchorage regulations in 33 CFR 110.183 to modify the coordinates for Anchorage B. The temporary final rule changes the latitude of the point of beginning for Anchorage B from 30°21′00″ N to 30°20′50″ N, for greater accuracy.

(3) *Anchorage Regulations*: The proposed rule added new paragraph (e) to existing anchorage regulations at 33 CFR § 110.183 to limit anchoring between the Fuller Warren Bridge and the Matthews Bridge to recreational vessels 40 feet or less in length within areas to be marked by temporary buoys. This temporary final rule broadens the proposed restriction to allow anchoring between the Fuller Warren Bridge and the Matthews Bridge by recreational vessels 60 feet or less in length within areas to be marked by temporary buoys.

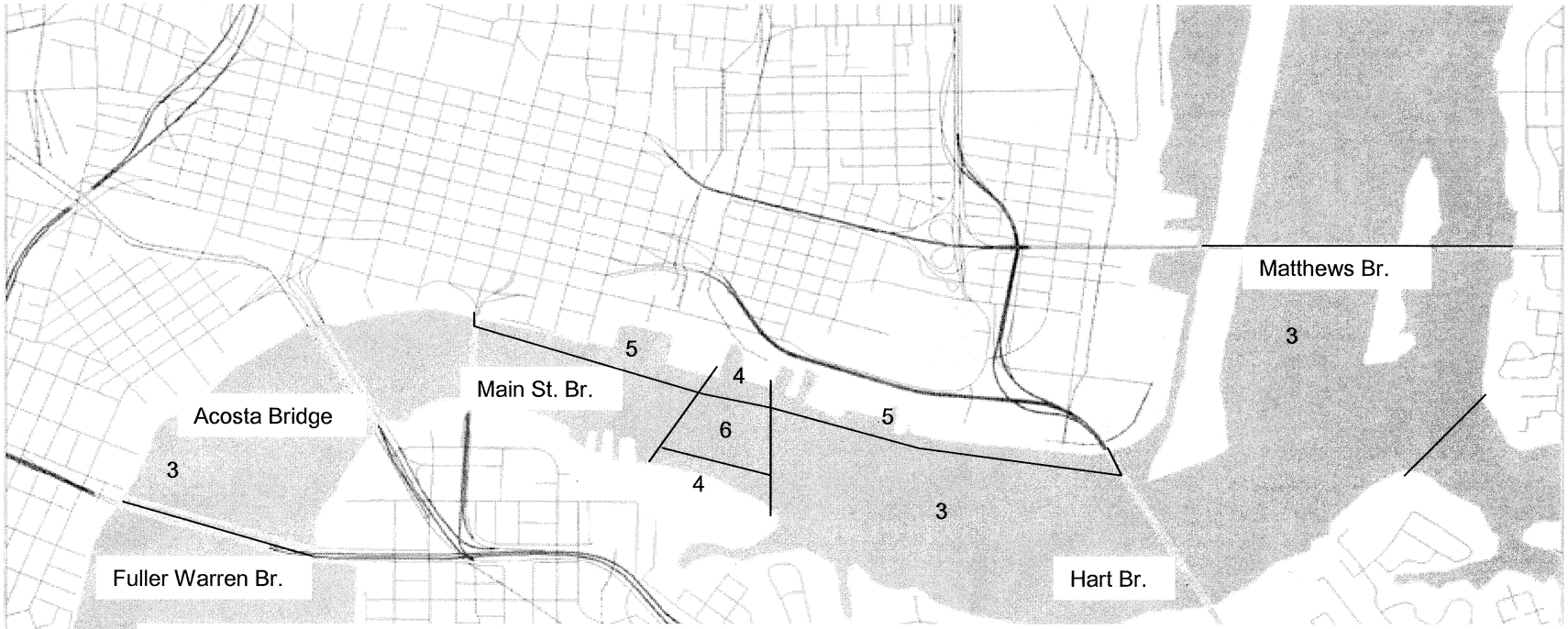
BILLING CODE 4910–15–P

BILLING CODE 4910–15–C

Figure 1

Security Zones for Super Bowl XXXIX

St. Johns River, Jacksonville, FL



3. Security Zone – All Waters from Fuller Warren Bridge to Matthews Bridge

11:59 p.m. February 4, 2005 until 3 a.m. February 7, 2005

4. Security Zone – Within 25 yards of River Bank at Passenger Terminals; JEA Park and Transportation Hub

6:00 a.m. February 2, 2005 until 11:59 p.m. February 7, 2005

5. Security Zone – Within 25 yards of North River Bank from Main Street Bridge to Hart Bridge

11:59 a.m. February 6, 2005 until 3 a.m. February 7, 2005

6. Security Zone – All Waters, bank to bank from JEA Park to the Transportation Hub

11:59 a.m. February 6, 2005 until 3 a.m. February 7, 2005

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although the regulated navigation areas apply to a large section of the St. Johns River, traffic will be allowed to pass through the zones with the permission of the Captain of the Port Jacksonville or his designated representatives. Additionally, the Coast Guard has consulted with industry representatives to obtain concurrence with the rule and has attended public meetings with recreational boaters to discuss impact of the rule. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of the St. Johns River at various times between February 2, 2005 and February 7, 2005.

These regulations will not have a significant economic impact on a substantial number of small entities for the following reasons. Each area, zone or anchorage restriction in this rule will only be in effect for a limited duration. With the exception of vessels carrying certain dangerous cargo as defined in 33 CFR 160.204, vessels will still be allowed to transit after obtaining authorization from the Captain of the Port or his designated representatives. All vessels carrying certain dangerous cargo as defined in 33 CFR 160.204 will be prohibited from transiting the security zones. Based upon consultation with local industry representatives it has been determined there is no regular traffic of such vessels on the St Johns River through the area of the anticipated security zones and no such traffic is expected.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. On December 10, 2004, we published a notice of proposed rulemaking (NPRM) for this rule in the **Federal Register** (Volume 69, Number 237) on December 10, 2004. One comment was received in response to the NPRM.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of the Instruction, from further environmental documentation. As anchorage regulations, regulated navigation areas and security zones, the temporary final rules satisfy the requirements of paragraphs 34(f) and (g).

Under figure 2–1, paragraph (34)(f) and (g) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 6 a.m.(EST) on February 2, 2005 until 11:59 p.m.(EST) on February 7, 2005, in § 110.183, paragraphs (a) and (b) are suspended in their entirety and new paragraphs (c), (d) and (e) are added to read as follows:

§ 110.183 St. Johns River, Florida.

* * * * *

(c) *Anchorage B.* (Lower Anchorage) The Anchorage is established within the following coordinates, the area enclosed by a line starting at a point on the eastern shore of the river at 'Floral Bluff' at 30°20′50″ N, 081°36′41″ W; thence to 30°20′50″ N, 081°37′08″ W in vicinity of buoy G″75″; thence to 30°21′50″ N, 081°36′56″ W; thence to 30°21′54″ N, 081°36′48″ W; thence returning to the point of beginning.

(d) *Regulations.* (1) Except in case of emergency, only vessels meeting the conditions of this paragraph will be authorized by the Captain of the Port to anchor in Anchorage B. Vessels unable to meet any of the following restrictions must obtain specific authorization from the Captain of the Port prior to anchoring in Anchorage B.

(2) All vessels intending to enter and anchor in Anchorage B must notify the Captain of the Port prior to entering.

(3) Anchorage B is a temporary anchorage. Additionally, Anchorage B is used as a turning basin. Vessels may not anchor for more than 24 hours without specific written authorization from the Captain of the Port.

(4) All vessels at anchor must maintain a watch on VHF–FM channels 13 and 16 by a person fluent in English, and must make a security broadcast on channel 13 upon anchoring and every 4 hours thereafter.

(5) Anchorage B is restricted to vessels with a draft of 24 feet or less, regardless of length.

(6) Any vessel transferring petroleum products within Anchorage B must have a pilot or Docking Master aboard, and employ sufficient assist tugs to assure the safety of the vessel at anchor and any vessels transiting the area.

(7) Any vessel over 300 feet in length within Anchorage B must have a pilot or Docking Master onboard, and employ sufficient assist tugs to assure the safety of the vessel at anchor and any vessels transiting the area.

(e) *Temporary Anchorages.* (1) Five temporary anchorage areas will be established in the waters of the St. Johns River between the Fuller Warren Bridge and the southern end of Anchorage B to exclusively accommodate recreational vessels, 60 feet in length or less, for various events during the effective period. Vessels must seek authorization from the Captain of the Port prior to anchoring. Up to twenty recreational vessels may raft outboard of one another. Buoys will mark all temporary anchorage areas.

(2) Several temporary anchorage areas will be established in the waters north of the Matthews Bridge to accommodate larger recreational vessels and commercial vessels. Buoys will mark all temporary anchorage areas.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. From February 2, 2005, at 6 a.m.(EST) until February 7, 2005, at 11:59 p.m.(EST) in § 165.759, paragraph (a) is suspended and a new paragraph (e) is added to read as follows:

§ 165.759 Security Zones; Ports of Jacksonville, Fernandina, and Canaveral, Florida.

* * * * *

(e) *Regulated area.* (1) Moving Security zones are established around all tank vessels, cruise ships, and military pre-positioned ships during transits entering or departing the ports of Jacksonville, Fernandina, and Canaveral, Florida. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30°23′35″ N, 81°19′08″ W, when entering the port of Jacksonville, or pass port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28°22.7′ N, 80°31.8′ W, and 28°23.7′ N, 80°29.2′ W when entering Port Canaveral. Fixed security zones are established 100 yards around all tank vessels and military pre-positioned ships docked in the Ports of Jacksonville, Fernandina, and Canaveral, Florida.

(2) Fixed security zones are established 100 yards around all cruise ships docked in the Ports of Jacksonville, Fernandina, and Canaveral, Florida except for security zones around vessels docked at the Talleyrand Marine Terminal and the Jacksonville Cruise Ship Passenger Terminal in the Port of Jacksonville that extend 400 yards around cruise ships.

■ 5. Add § 165.T07–090 to read as follows:

§ 165.T07–090 Regulated Navigation Areas and Security Zones; St. Johns River, Jacksonville, FL.

(a) *Locations. (1) Regulated navigation area; Winter Point to the Matthews Bridge.*

(i) *Area.* All waters, shore-to-shore and surface to bottom, between an imaginary line drawn between Winter Point (30°18′36″ N, 81°40′36″ W), south through Winter Point Light 1 (30°17′48″ N, 81°40′24″ W) to Point La Vista (30°16′42″ N, 81°39′48″ W), and the Matthews bridge, excluding the waters of the Arlington River east of an imaginary line between 30°19′12″ N, 81°36′42″ W and 30°19′00″ N, 81°36′48″ W.

(ii) *Enforcement period.* The regulated navigation area in paragraph (a)(1)(i) will be enforced from 6 a.m. on February 2, 2005, until 6 p.m. on February 7, 2005.

(2) Regulated navigation area; St. Johns River, Matthews Bridge to St. Johns Bluff Reach.

(i) *Area.* All waters, surface to bottom, and bank to bank, within the St. Johns River from the Matthews Bridge to an imaginary line between the south bank of the Trout River at 30°20′06″ N, 81°38′00″ W and 30°23′06″ N, 81°37′18″ W, and within 400 yards of the Federal Channel of the St. Johns River, as visually marked by buoys and day boards, including around both sides of Blount Island, from an imaginary line between the south bank of the Trout River at 30°23′06″ N, 81°38′00″ W and 30°23′06″ N, 81°37′18″W, to an imaginary line at the front range light of the Fulton Cutoff Range between 30°23′36″ N, 81°30′06″ W South to 30°23′12″ N, 81°30′06″ W.

(ii) *Enforcement period.* The regulated navigation area in paragraph (a)(2)(i) will be enforced from 6 a.m. on February 2, 2005, until 6 p.m. on February 7, 2005.

(3) Security Zone, St. Johns River, Fuller Warren Bridge to the Matthews Bridge.

(i) *Area.* All waters shore-to-shore and surface to bottom of the St. Johns River, between the Fuller Warren Bridge and the Matthews Bridge excluding the waters of the Arlington River east of an imaginary line between 30°19′12″ N, 81°36′42″ W and 30°19′00″ N, 81°36′48″ W.

(ii) *Enforcement period.* The security zone in paragraph (a)(3)(i) will be enforced from 11:59 p.m. on February 4, 2005, until 3 a.m. on February 7, 2005.

(4) Security Zone, St. Johns River, Passenger terminals at JEA Park and the Transportation Hub.

(i) *Area.* All waters extending 25 yards into the river and following the contour of the southern bank of the river between 30°19.04′ N, 081°38.59′ W and 30°18.53′ N, 081°38.40′ W, and all waters extending 25 yards into the river and following the contour of the northern bank of the river between 30°19.16′ N, 081°38.50′ W and 30°19.16′ N, 081°38.41′ W.

(ii) *Enforcement period.* The security zone in paragraph (a)(4)(i) will be enforced from 6 a.m. on February 2, 2005, until 11:59 a.m. on February 7, 2005.

(5) Security Zone, St. Johns River, Main Street Bridge to the Hart Bridge.

(i) *Area.* All waters, extending 25 yards into the river and following the contour of the northern bank of the river, between the Main Street Bridge and the Hart Bridge.

(ii) *Enforcement period.* The security zone in paragraph (a)(5)(i) will be enforced from 11:59 a.m. on February 6, 2005 until 3 a.m. on February 7, 2005.

(6) Security Zone, St. Johns River, JEA Park to the Transportation Hub.

(i) *Area.* All waters within the perimeter of the following: originating at 30°19.04′ N, 081°38.59′ W then north to 30°19.16′ N, 081°38.50′ W, then east following the contour of the northern bank of the river to 30°19.16′ N, 081°38.41′ W, then south to 30°18.53′ N, 081°38.40′ W, and west following the contour of the south bank of the river to the origin at 30°19.04′ N, 081°38.59′ W.

(ii) *Enforcement period.* The security zone in paragraph (a)(6)(i) will be enforced from 11:59 a.m. on February 6, 2005 until 3 a.m. on February 7.

(b) Definitions.

The following definitions apply to this section.

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port (COTP), Jacksonville, Florida, in the enforcement of the regulated navigation areas and security zones.

Minimum Safe Speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

Motorized personal watercraft means vessels less than 16 feet in length which are designed to be operated by a person or persons sitting, standing, or kneeling on the craft, rather than within the confines of a hull.

(c) Regulations. (1) *Regulated Navigation Areas.* The regulations in paragraph (c)(1) apply to the areas in paragraphs (a)(1) and (a)(2) of this section.

(i) All vessels and persons entering and transiting through the regulated navigation area must proceed continuously and at a minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. Nothing in this rule alleviates vessels or operators from complying with all state and local laws in the area.

(ii) All vessels and persons must comply with orders from the Coast Guard Captain of the Port, Jacksonville, Florida, or that officer's designated representatives, regulating their speed, course, direction and movements within the regulated navigation areas.

(2) *Security zones.* The regulations in this paragraph apply to the zones in paragraph (a)(3) through (a)(6) of this section. All vessels that seek entry to the zones, and those vessels located in the zones when the zones become effective, will be subject to a security screening. Vessel operators must receive express permission to enter, or, for vessels already inside the zone when it becomes effective, permission to remain in the security zone from federal, state or local personnel designated by the Captain of the Port; vessels must not transport or possess certain dangerous cargo as defined in 33 CFR 160.204; and persons must not operate or place in the water jet skis or other motorized personal watercraft at any time while the security zone is in effect. Entry into and continued presence within the security zones by vessels or persons that entered without authorization from the Captain of the Port is prohibited unless authorized by the Coast Guard Captain of the Port, Jacksonville, Florida, or that officer's designated representatives. Vessels moored, docked or anchored in the security zones when they become effective must remain in place unless ordered by or given permission from the COTP to do otherwise. Security Zone (a)(5) further prohibits vessel movement within the zone without prior approval by the Captain of the Port or his designated representatives. Vessels or persons desiring to enter or transit the

areas encompassed by any of the security zones, or those vessels or persons located within a zone when it becomes effective and who desire to remain inside the zone, may contact the Coast Guard Captain of the Port or his designated representatives on VHF Channel Marine 12 to seek permission to enter, transit or remain in the zone. If permission is granted, all persons and vessels must comply with the instructions of the COTP or that officer's designated representatives.

(d) *Effective period.* This section is effective from 6 a.m. on February 2, 2005, until 11:59 p.m. on February 7, 2005.

Dated: January 12, 2005.

D. Brian Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–1424 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–006]

RIN 1625–AA00

Safety Zone; Delaware River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Delaware River encompassing all waters from the Tacony-Palmyra Bridge to the Bellevue/Marcus Hook ship ranges at Buoy 2M, shoreline to shoreline. The temporary safety zone prohibits persons or vessels from entering the zone, unless authorized by the Captain of the Port Philadelphia, PA or designated representative. This safety zone is necessary to provide for the safety of life, property and to facilitate oil spill environmental response activities.

DATES: This rule is effective from January 15, 2005 until February 15, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–006 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jill Munsch or ENS Otis Barrett, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with oil spill recovery operations and to ensure the safety of the environment on the Delaware River and its tributaries. Due to the amount of time needed to clean up the oil spill, this safety zone is needed to facilitate safe oil spill recovery operations.

Background and Purpose

On November 27, 2004 at 9:30 p.m. the T/V ATHOS I reported a major discharge of oil on the waters of the Delaware River. Oil spill response operations are being conducted in the safety zone. A number of oil spill response vessels and clean up personnel will be in the safety zone during the duration of the response operations. This rule establishes a safety zone, on the Delaware River covering all the waters of the area bound from the Tacony-Palmyra Bridge to the Bellevue/Marcus Hook ship ranges, at Buoy 2M. Mariners will only be allowed to transit the safety zone with the permission of the COTP or his designated representative. The safety zone will protect mariners and oil spill responders from the hazards associated with spill recovery and clean up operations. The Captain of the Port will notify the maritime community, via marine broadcasts, of the ability of vessels to transit through the safety zone. Mariners allowed to travel through the safety zone with the permission of the COTP must maintain a minimum safe speed, in accordance with the Navigation Rules as seen in 33 CFR Chapter I, Subchapters D and E.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will have virtually no impact on any small entities. This rule does not require a general notice of proposed rulemaking and, therefore, it is exempt from the requirement of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency?s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–743–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 12211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–006 to read as follows:

§ 165.T05–006 Safety zone; Delaware River.

(a) *Location.* The following area is a temporary safety zone: All waters of the Delaware River from the Tacony-Palmyra Bridge to the Bellevue/Marcus Hook ship ranges at Buoy 2M, shoreline to shoreline.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessel traffic is prohibited in the safety zone.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) All persons desiring to transit through the safety zone must contact the Captain of the Port at telephone number (215) 271–4807 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Philadelphia, PA or designated representative.

(4) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(5) Mariners granted permission to transit the safety zone must maintain the minimum safe speed necessary to maintain navigation as per 33 CFR Chapter I, Subchapters D and E.

(c) *Definitions. Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective period.* This section is effective from January 15, 2005 until February 15, 2005.

Dated: January 13, 2005.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 05–1423 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–001]

RIN 1625–AA11

Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area between Mile Markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal on the Illinois Waterway near Romeoville, IL. This temporary regulated navigation area will place navigational and operational restrictions on all vessels transiting through the demonstration electrical dispersal barrier located on the Chicago Sanitary and Ship Canal between Mile Markers 296.1 and 296.7. This regulated navigation area is necessary to protect vessels and their crews from harm as a result of electrical discharges emitting from the electrical dispersal barrier as vessels transit over it.

DATES: This temporary rule is effective from 3 p.m. (CST) January 13, 2005 until 12 p.m. (CST) June 30, 2005. Comments and related materials must reach the Docket Management Facility on or before March 13, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number [CGD09–05–001] to the U.S. Coast Guard Ninth Coast Guard District (map), 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. The Marine Safety and Analysis Branch (map) is the document management facility for this temporary rule and maintains the public docket for this rulemaking. Documents that become a part of this docket are available for inspection between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact Commander M. Gardiner, Marine Safety and Analysis Branch, Cleveland, at (216) 902–6047.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. Comments and related materials must reach the Docket Management Facility on or before March 13, 2005.

Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09–05–001], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail or delivery to the docket management facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket management facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This potential hazard to vessels and people only recently became apparent, and therefore we were unable to publish an NPRM followed by a final rule. At this point, it would be impracticable and contrary to the public interest to provide for notice and comment, due to the need to prevent the risk of electrocution to vessels and their crew/passengers. During the initial enforcement of this regulated navigation area, comments will be accepted and reviewed and may result in a modification to the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists to make this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to the public interest of ensuring the safety of persons and vessels, and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

On January 7, 2005, the U.S. Army Corp of Engineers, in close coordination with the U.S. Coast Guard, conducted preliminary safety tests on the Chicago Sanitary and Ship Canal at Mile Marker 296.5 in the vicinity of the demonstration electrical dispersal barrier located on the canal near Romeoville, IL. This barrier was constructed to prevent Asian Carp from entering Lake Michigan through the Illinois River system by generating a low-voltage electric field across the canal. The Coast Guard and Army Corps of Engineers conducted field tests to ensure the continued safe navigation of commercial and recreational traffic across the barrier; however, results indicated a significant arcing risk and hazardous electrical discharges as vessels transited the barrier posing a significant risk to navigation through the barrier. To mitigate this risk, navigational and operational restrictions will be placed on all vessels transiting through the vicinity.

Discussion of Temporary Rule

Until this potential hazard to navigation can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. These requirements include: All vessels are prohibited from loitering in the vicinity of the electrical dispersal barrier. ''Vicinity'' of the electrical dispersal barrier is defined as the Chicago Sanitary and Ship Canal from the north side of the Romeo Highway Bridge at Mile Marker 296.1 to the aerial pipeline arch located at Mile Marker 296.7. Vessels may enter this section of the waterway with the sole purpose of transiting to the other side, and must maintain headway throughout the transit. All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the ''vicinity'' until subsequent field testing determines the waters in this area do not pose significant risk to human life. Vessels may not moor or lay up on the right or left descending banks. Towboats may not make or break tows. Vessels may not pass (meet or overtake) in the ''vicinity'' and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side. Commercial tows transiting the barrier must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

These restrictions are necessary for safe navigation of the barrier and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during recent safety tests conducted by the Army Corps of Engineers. Deviation

from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the fact that traffic will still be able to transit through the RNA.

Small Entities

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the point of contact listed in **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore this rule is categorically excluded, under figure 2–1, paragraph 34(g) from further environmental documentation. This temporary rule establishes a regulated navigation area and as such is covered by this paragraph.

A final ''Environmental Analysis Check List'' and a final ''Categorical

Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09.001 to read as follows:

§ 165.T09—001 Temporary Regulated Navigation Area between mile markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal located near Romeoville, IL.

(a) *Location.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL beginning at the north side of Romeo Road Bridge Mile Marker 296.1, and ending at the south side of the Aerial Pipeline Mile Marker 296.7.

(b) *Effective Period:* This rule is effective from 3 p.m. (CST) January 13, 2005 until 12 p.m. (CST) June 30, 2005.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels are prohibited from loitering in the vicinity of the electrical dispersal barrier. ''Vicinity'' of the electrical dispersal barrier is defined as the Chicago Sanitary and Ship Canal from the north side of the Romeo Highway Bridge at Mile Marker 296.1 to the aerial pipeline arch located at Mile Marker 296.7. Vessels may enter this section of the waterway with the sole purpose of transiting to the other side, and must maintain headway throughout the transit. All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the ''vicinity'' until subsequent field testing determines the waters in this area do not pose significant risk to human life. Vessels may not moor or lay up on the right or left descending banks. Towboats may not make or break tows. Vessels may not pass (meet or overtake) in the ''vicinity'' and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side. Commercial tows transiting the barrier must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(3) All persons and vessels shall comply with this rule and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative.

Dated: January 13, 2005.

R.J. Papp,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 05–1425 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 04–133]

RIN 1625–AA00

Safety Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones on the St. Johns River off the Main Street Bridge, the Acosta Bridge, and the Hart Bridge. These safety zones are necessary for the Super Night of Lights fireworks display scheduled on February 3, 2005, downtown Jacksonville and will protect participants, vendors, and spectators from the hazards associated with the launching of fireworks off the aforementioned bridges and cascading onto the St. Johns River. These temporary safety zones prohibit persons or vessels from entering the zone, unless authorized by the Captain of the Port Jacksonville or a designated representative.

DATES: This rule is effective from 9:45 p.m. to 10:45 p.m. on February 3, 2005.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket [COTP Jacksonville 04–133] and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Carol Swinson at Coast Guard Marine Safety Office Jacksonville, Florida, tel: (904) 232–2640, ext. 155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date is contrary to public safety because immediate action is necessary to protect the public and waters of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and may place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

This rule is needed to protect spectator craft in the vicinity of the fireworks presentation from the hazards associated with transport, storage, and launching of fireworks. Anchoring, mooring, or transiting within these zones is prohibited, unless authorized by the Captain of the Port, Jacksonville, Florida. The temporary safety zone encompasses all waters 500 yards east and west of the Main Street Bridge, 500 yards east of the Acosta Bridge, and 500 yards west of the Hart Bridge.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their

field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for one hour and the impact on routine navigation are expected to be minimal because traffic may transit safely around the zone and traffic may enter upon permission of the Captain of the Port or his representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions and annually rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that my result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T–07–133 is added to read as follows:

§ 165.T–07–133 Safety Zone St. Johns River, Jacksonville, Florida.

(a) *Regulated area.* The Coast Guard is establishing temporary safety zones on the St. Johns River extending 500 yards east and west of the Main Street Bridge,

500 yards east of the Acosta Bridge, and 500 yards west of the Hart Bridge.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, Florida.

(c) *Dates.* This rule is effective from 9:45 p.m. to 10:45 p.m. on February 3, 2005.

Dated: January 18, 2005.

David L. Lepsch,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 05–1427 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30 and 31

[FRL–7863–3]

Notice of Availability of Class Deviation; Assistance Agreement Competition-Related Disputes Resolution Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document provides notice of the availability of a Class Deviation from EPA's assistance agreement dispute procedures and also sets forth the procedures that will apply to the resolution of competition-related disputes and disagreements that may arise in connection with the competition of EPA assistance agreements. Currently, assistance agreement competition-related disputes and disagreements are resolved in accordance with EPA assistance agreement dispute procedures that apply to financial assistance to institutions of higher education, hospitals, non-profit organizations, States, tribes, local governments and other eligible entities. EPA has determined, however, through a Class Deviation, that these procedures are not practicable to use for competition-related disputes and disagreements and that it is appropriate to replace those procedures with the procedures contained in this document. These new dispute resolution procedures will apply to competitive awards that are subject to applicable EPA assistance agreement procedures unless there are program specific statutory or regulatory dispute procedures that apply to such awards. The Class Deviation and this action only affect the dispute resolution procedures for assistance agreement competition-related disputes and disagreements.

DATES: These procedures are effective upon January 26, 2005.

FOR FURTHER INFORMATION CONTACT: Bruce Binder, Associate Director for Grants Competition, Office of Grants and Debarment, 1200 Pennsylvania Avenue, NW., Mail Code 3901R, Washington, DC 20460. The telephone number is (202) 564–4935; facsimile number (202) 565–2469; and e-mail address is *binder.bruce@epa.gov.* Copies of the Class Deviation are available by contacting Bruce Binder as indicated above.

SUPPLEMENTARY INFORMATION: This action sets forth the dispute resolution procedures based on the Class Deviation that are to be used in lieu of the dispute procedures contained in 40 CFR 30.63 and 40 CFR part 31, subpart F, 40 CFR 31.70 for the resolution of EPA assistance agreement competition-related disputes and disagreements. These procedures will ensure that applicants are provided with a meaningful and effective dispute resolution process for assistance agreement competition-related disputes and disagreements. The procedures provide that unsuccessful applicants will receive timely notification that EPA determined that their application or proposal was either ineligible for an award or was not selected for an award. Applicants may then, upon request, obtain a timely debriefing on the basis for the Agency's decision. Debriefings may be oral or written but are mandatory if the applicant intends to file a dispute in order to minimize misunderstandings between the Agency and the applicant and provide an opportunity to expeditiously resolve differences without the need to file a formal dispute. The applicant may file a formal dispute within 15 calendar days after the debriefing.

In addition to establishing a nationally consistent assistance agreement competition disputes process, the procedures in this document clarify roles and responsibilities and specify the circumstances in which applicants may dispute EPA decisions. Agency Officials must appoint a Grants Competition Disputes Decision Official (GCDDO) to resolve the dispute; the GCDDO cannot be involved in the decision that is the subject of the dispute. The GCDDO determines whether the issues raised in the dispute warrant delaying the competitive process until the dispute is resolved. These procedures also generally limit disputes to eligibility-type determinations made by EPA and generally do not allow an applicant to challenge a scoring or ranking determination, unless there is a compelling reason or an issue of national significance which would warrant EPA review of the dispute. The procedures also establish that the GCDDO's decision will constitute final agency action for the purposes of judicial review with no right to any further EPA review.

In addition, EPA headquarters and regional program offices may, with the approval of the EPA Grants Competition Advocate, adopt dispute resolution procedures that are ''substantially the same'' as the procedures contained in this document. Each EPA announcement for a competitive assistance agreement will either include or reference the applicable disputes procedure for that particular competition (if referenced, the announcement will indicate how applicants can obtain a copy of the dispute procedures).

Regulated Entities: The assistance agreement competition-related disputes procedures covered by this action apply to all entities which compete for competitive assistance agreement awards that are subject to the applicable EPA assistance agreement procedures found at 40 CFR parts 30, 31, and 35 unless the part 35 regulations contain specific dispute procedures that apply to such awards.

Background: The regulatory disputes resolution coverage currently found at 40 CFR 31.70 was initially codified in the CFR on September 30, 1983 at 40 CFR 30.303(b) and 40 CFR part 30, subpart L (1983). 48 FR 4506 (September 30, 1983). At that time, EPA changed the assistance agreement disputes process from an adversarial, trial type process before the EPA Board of Assistance Appeals, to a more informal system administered by Agency program managers. The preamble to the final rule described the 1983 changes to the disputes process as follows:

The new process will:

1. Encourage cooperation between the Agency's officials and those applying for and receiving assistance.

2. Develop a good administrative record to support the Agency's final decisions.

3. Provide applicants and recipients high-level review of Agency decisions and a forum for resolving disputes informally, expeditiously, and inexpensively.

4. Provide applicants and recipients a written decision explaining the basis for the position.

Fair and consistent dispute resolution remains a central principle of administering EPA's assistance programs. The procedures in subpart L continue to give recipients and applicants the right to request a high level review of decisions concerning issues arising under the EPA assistance programs. 48 FR at 45060.

These same disputes provisions and processes were included in EPA regulations found at 40 CFR parts 30 and 31 implementing the ''common rules'' for OMB Circular A–102 in 1988 and OMB Circular A–110 in 1996. 53 FR 8034, 8076 (March 11, 1988); 61 FR 6066, 6081 (February 15, 1996). The dispute provisions were moved from 40 CFR part 30, subpart L to 40 CFR part 31, subpart F, 40 CFR 31.70, when EPA implemented OMB Circular A–102 through 40 CFR part 31. The Agency's rule implementing OMB Circular A–110 incorporates the 40 CFR 31.70 disputes procedures at 40 CFR 30.63. However, neither OMB Circular A–102 nor A–110 contains government-wide assistance agreement dispute provisions.

Based on the language in the preamble discussed above referencing the applicability of the disputes process to applicants, EPA concluded that the assistance agreement disputes process would apply if an applicant for a competitively awarded agreement chose to dispute a decision that it was either ineligible to compete for the agreement or that its application was not selected for funding based on the merits of the proposal. Consequently, EPA's September 2002 Policy for Competition in Assistance Agreements provided that the Agency would follow the 40 CFR 31.70 process for disputes and disagreements related to EPA assistance agreement competitions.

Notwithstanding the statements in the 1983 preamble regarding assistance agreement applicants, the 40 CFR 31.70 disputes provisions are geared to effectively resolve cost allowability or assistance agreement administration disputes rather than competition-related disputes and disagreements that may arise in connection with the award of assistance agreements. This disputes process does not specify any time frame for an applicant to dispute a decision or for EPA to issue a final decision. It does not provide Agency selection and award officials with nationally consistent policies and procedures for the resolution of assistance agreement competition-related disputes or for determining whether the application/proposal evaluation and award process needs to be delayed when an applicant files a dispute. The process is time consuming, particularly since it includes two administrative appeal levels, and resource intensive for both EPA and aggrieved applicants and is not suitable for the resolution of competition-related disputes and disagreements.

In order to address these issues for assistance agreement competition-related disputes and disagreements, this action sets forth dispute resolution procedures that will provide applicants with a meaningful dispute resolution process that is better suited for competition-related disputes and disagreements than the 40 CFR part 30 and 40 CFR part 31, subpart F dispute procedures. Accordingly, pursuant to 40 CFR 31.6(d), the Director of the EPA Grants Administration Division has issued a Class Deviation approving the use of these procedures.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

List of Subjects in 40 CFR Parts 30 and 31

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: January 12, 2005.

David J. O'Connor,

Acting Assistant Administrator for the Office of Administration and Resources Management.

EPA establishes assistance agreement competition-related dispute resolution procedures as follows:

1. The authority citation for the assistance agreement competition-related disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3).

2. The disputes resolution procedures that will apply to EPA assistance agreement competition-related disputes and disagreements will be referenced or included in competitive announcements and are as follows:

Dispute Resolution Procedures

a. Whenever practicable, disputes and disagreements relating to assistance agreement competition-related decisions and actions must be resolved at the lowest level possible.

b. The procedures and time frames specified below are designed to provide for an efficient, effective, and meaningful dispute resolution process. EPA Program Offices may use ''substantially the same'' dispute procedures as those specified herein if they are approved by the EPA Grants Competition Advocate (GCA) and provide applicants with a meaningful dispute resolution process. A meaningful dispute resolution process is one that affords unsuccessful applicants the opportunity for an effective remedy if they succeed on their dispute.

c. *Notification:* (1) The Program Office conducting the competition must provide applicants with timely written or e-mail notification that they were (i) determined to be ineligible for award consideration as a result of the threshold eligibility review of their application/proposal (*e.g.,* the application/proposal failed to meet the threshold eligibility criteria in the announcement), or (ii) not selected for award based on their ranking/scoring after an evaluation of their application/proposal against the ranking and

selection factors in section V of the announcement.

(2) Notification of ineligibility must be provided by the Program Office to the applicant within fifteen calendar days of the decision finding that the applicant was not eligible for award consideration because of a failure to meet the threshold eligibility criteria in the announcement; notification to applicants that they were not selected for award based on the ranking/scoring of their proposal/application must be provided by the Program Office to the applicant within fifteen calendar days of the final selections for award.

(3) The notification letter or e-mail must indicate, as appropriate, that the applicant and/or its application/proposal was not eligible for award consideration based on the threshold eligibility review, or not selected for award based on the ranking/scoring of its application/proposal, and generally explain the reasons why. It must also advise the applicant that it may request a fuller debriefing (and notify the applicant that it must make its debriefing request within fifteen calendar days of receiving the notification letter or e-mail) of the basis for the ineligibility determination or selection decision. Debriefings, however, are not required when an applicant's proposal/application is rejected solely because it failed to meet a submission deadline date specified in section IV of the announcement (*e.g.,* it was received, postmarked, etc., after the deadline established in the announcement making it a late proposal/application).

d. *Debriefings:* (1) Debriefings may be done orally (*e.g.,* face to face, telephonically) or in writing at the discretion of the Program Office, although oral debriefings are strongly preferred because they provide a better opportunity to resolve questions and issues in an expedited manner. For oral debriefings, the Program Office will conduct the debriefing of the unsuccessful applicant at a mutually agreeable time and place as soon as practicable after receiving the debriefing request; for written debriefings, the Program Office will provide the unsuccessful applicant with a written debriefing as soon as practicable after receiving the debriefing request. All debriefings, but particularly those for applicants that were deemed ineligible for award consideration for failure to meet the threshold eligibility factors in the announcement, must be conducted in a timely manner so that the applicant has the opportunity to obtain a meaningful remedy if they successfully challenge the ineligibility determination.

(2) Upon receiving a debriefing request from an unsuccessful applicant, the Program Office must promptly notify the Director, Office of Grants and Debarment, or regional award official, as appropriate, so that a Grants Competition Dispute Decision Official (GCDDO) can be designated.

(3) The oral or written debriefing will be limited to explaining why the applicant was found ineligible for award consideration or why it was not selected for award and must not disclose any information protected from disclosure by applicable law or regulation (*e.g.,* the Freedom of Information Act, Privacy Act), including trade secrets, privileged or confidential commercial, financial or other information exempt from disclosure under the Freedom of Information Act, or the identity of review panel members or other reviewers. The Program Office should consult with Office of General Counsel/Office of Regional Counsel (OGC/ORC) attorneys before any oral debriefing and allow them to review any written debriefing response before it is sent. Further, any questions relating to what type of information may be disclosed at a debriefing must be directed to OGC/ORC attorneys or the Grants Competition Advocate.

(4) The debriefing explanation will, as appropriate:

(A) Identify the threshold eligibility criteria that the applicant failed to meet and specify the basis for the Agency's determination that the proposal/application or applicant was not eligible for award consideration because of failure to meet the threshold eligibility criteria.

(B) Provide the applicant with the numerical (*e.g.,* points) or other basis for scoring/ranking its proposal/application under the evaluation criteria used in the competition.

(C) Provide the applicant with information on the strengths and weaknesses of its proposal/application in terms of the specific evaluation criteria used in the competition.

(D) Provide responses to relevant questions regarding whether the evaluation and selection procedures contained in the announcement were followed and why the applicant was not selected for award. However, the debriefing must not include point by point comparisons of the applicant's proposal/application to other proposals/applications.

(E) Identify the GCDDO.

e. *Filing of a Dispute:* (1) After receiving a debriefing, an unsuccessful applicant or their representative may file a written dispute with the appropriate GCDDO. When there was an oral debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of the debriefing date; when there was a written debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of when the applicant received the written debriefing letter. The written dispute must include a detailed statement of the legal and/or factual basis for the dispute, the remedy that the applicant is seeking, information on how to communicate with the applicant or its representative (*e.g.,* phone and fax numbers, e-mail address), and any documentation relevant to the dispute. Disputes may only be filed with the GCDDO after a debriefing; disputes filed before, or in the absence of, a debriefing will be dismissed. Furthermore, the GCDDO is only required to consider disputes on the following grounds:

(A) Where an applicant challenges the EPA determination that it and/or its proposed project is ineligible for funding based on the applicable statute, regulation, or announcement requirements; or

(B) Where the applicant challenges the decision that it is not eligible for award consideration because EPA determined that its proposal/application did not meet the threshold eligibility requirements contained in the announcement.

(2) Unsuccessful applicants whose proposal/application was rejected solely because it was received late, or who were not selected for award based on the ranking/scoring of its proposal/application after a full evaluation by EPA based on the ranking and selection criteria in section V of the announcement (*e.g.,* challenges to the Agency's technical evaluation or ranking/scoring of the applicant based on the ranking and selection factors in section V of the announcement), are not entitled to file disputes with the GCDDO. Such disputes will be dismissed by the GCDDO except as may be provided for in paragraph (3) below. In addition, the GCDDO may dismiss any dispute that is clearly untimely filed, raises issues that the GCDDO will not consider, or that fails to set forth a detailed statement of the legal and/or factual basis for the dispute.

(3) The GCDDO, for good cause shown and where there are compelling reasons, or where he/she determines that a dispute raises significant issues of widespread interest to the assistance agreement community, may consider an untimely filed dispute or any other dispute filed by an unsuccessful

applicant. The GCDDO will invoke this discretion sparingly.

f. If a dispute is filed, the GCDDO must consult with the Program Office, OGC/ORC, and the GCA, and then determine whether it is in the Agency's best interest to delay the award process pending resolution of the dispute, particularly for disputes involving threshold eligibility issues.

g. Unsuccessful applicants must be provided with reasonable access to Agency records relevant to the dispute in a manner consistent with the standards contained in the Freedom of Information Act. EPA will not disclose materials exempt from disclosure under the Freedom of Information Act.

h. Upon receiving a dispute, the GCDDO will establish a process and schedule for resolving the dispute and communicate this to the applicant and affected Program Office. At his or her discretion, the GCDDO may (i) request additional information from the applicant or Program Office and/or (ii) meet by phone or in person with the unsuccessful applicant and/or Program Office.

i. After reviewing all of the information relevant to the dispute, the GCDDO, after consultation with the GCA, and with the concurrence of the OGC/ORC, will timely issue a final written decision regarding the dispute. The GCDDO's decision will constitute final agency action and is not subject to further review within the Agency.

[FR Doc. 05–1371 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–SC–0002/0003–200421(a); FRL–7863–5]

Approval and Promulgation of Implementation Plans South Carolina: Definitions and General Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on November 14, 2003, for the purpose of clarifying current regulations and ensuring consistency between State and Federal regulations. The revisions consist of those published in the South Carolina State Register on August 28, 1998 and June 25, 1999, revising Regulation 61–62.1 Definitions and General Requirements.

DATES: This direct final rule is effective March 28, 2005 without further notice, unless EPA receives adverse comment by February 25, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2004–SC–0002 or R04–OAR–2004–SC–0003, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *ward.nacosta@epa.gov.*

4. Fax: 404–562–9019.

5. Mail: ''R04–OAR–2004–SC–0002 or R04–OAR–2004–SC–0003'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. Hand Delivery or Courier. Deliver your comments to: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2004–SC–0002 or R04–OAR–2004–SC–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On November 14, 2003, the South Carolina Department of Health and Environmental Control submitted revisions to the South Carolina SIP. These revisions were published in the South Carolina State Register on August 28, 1998 and June 25, 1999, revising Regulation 61–62.1 Definitions and General Requirements. The revisions include modifications to existing definitions and additions of new definitions and text to clarify Permitting Requirements.

1. Description of Revisions Published in the State Register as of August 28, 1998

a. In Regulation 61–62.1, Section I—Definitions, the State noted a discrepancy in the definition of Volatile Organic Compounds (VOC) and submitted a revised definition to restore uniformity to the SIP.

2. Description of Revisions Published in the State Register as of June 25, 1999

a. In Regulation 61–62.1, Section I—Definitions, the following definitions are being modified using language more consistent with State and Federal regulations:

- Air Curtain Incinerator
- Incinerator
- Industrial Furnace
- ''Total reduced sulfur (TRS)''
- Used Oil
- Virgin Fuel
- Waste
- Waste Fuel

The following terms are being added to Section I:

- Clean Wood
- Commercial Incinerator
- Municipal Solid Waste
- Plastics/rubber Recycling Unit
- Pyrolysis/Combustion Unit
- Refuse-derived Fuel
- Sludge Combustors
- Untreated lumber

The following terms are being deleted from Section I:

- Municipal Incinerator
- Municipal Waste
- Sludge Incinerator

All subsequent definitions have been renumbered and formatted for consistency.

b. In Regulation 61–62.1, Section II—Permit Requirements, the existing text in A.2. and G.8.a. is being revised to include an exemption for the review and signature of construction permit applications. The exemption states that professional engineers employed by the government may also review and sign these documents if they are preparing applications for the Federal government.

c. In Regulation 61–62.1, Section II, A.3., the existing language is revised to clearly define construction permit exempt facilities. Part of the existing text in Section II. A.3. will be renumbered to Section II. A.4.

d. The SIP amendments to Regulation 61–62.1 were done concurrently with amendments to the State-only Regulation 61–62.5, Standard No. 3, Emissions from Incinerators. EPA will not be acting on the amendments to Regulation 61–62.5, Standard No. 3 because it is not a part of the federally approved SIP.

II. Final Action

EPA is approving the aforementioned changes to the State of South Carolina SIP because they are consistent with the Clean Air Act and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 28, 2005 without further notice unless the Agency receives adverse comments by February 25, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 28, 2005 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: January 7, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

■ 2. Section 52.2120(c) is amended under Regulation No. 62.1, by revising the entries for ''Section I'' and ''Section II'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	**Federal Register** notice
Regulation No. 62.1 Definitions and General Requirements				
Section I	Definitions	10/26/01	1/26/05	[Insert citation of publication].
Section II	Permit Requirements	06/27/03	1/26/05	[Insert citation of publication].
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[FR Doc. 05–1374 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0341; FRL–7691–2]

Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of imidacloprid, ((1-[6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on bananas and sunflowers. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on bananas and sunflower seed. This regulation establishes maximum permissible levels for residues of imidacloprid in these food commodities. The tolerances will expire and are revoked on December 31, 2007.

DATES: This regulation is effective January 26, 2005. Objections and requests for hearings must be received on or before March 28, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0341. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *Sec-18-Mailbox@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (i.e., Departments of

Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide imidacloprid, [[(1-[6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on bananas at 1.0 parts per million (ppm) and sunflower at 0.05 ppm. These tolerances will expire and are revoked on December 31, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Imidacloprid on Bananas and Sunflower Seed and FFDCA Tolerances

Imidacloprid was requested by the State of Hawaii for use on bananas because of the ineffectiveness of currently registered insecticides in controlling the banana leaf aphid, and the insect's ability to vector Bananas Bunchy Top Virus (BBTV). EPA has authorized under FIFRA section 18 the use of imidacloprid on bananas for control of banana aphids in Hawaii. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

The States of Minnesota, Nebraska, and North Dakota declared crises for use of imidacloprid on sunflower seed to control wireworms due to the loss of the use of lindane and the lack of a viable alternative to control this pest on this crop.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of imidacloprid in or on bananas and sunflowers. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on bananas and/or sunflowers after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on bananas and/or sunflower seed or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Hawaii to use this pesticide on bananas and the States of Minnesota, Nebraska, and North Dakota to use this pesticide on sunflower seed under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate

exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of imidacloprid in or on bananas at 1.0 ppm and sunflower at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for imidacloprid used for human risk assessment is shown in Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary all populations	LOAEL = 42 mg/kg/day UF = 300 Acute RfD = 0.14 mg/kg	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 0.14 mg/kg	Acute neurotoxicity - rat LOAEL = 42 mg/kg, based upon the decrease in motor and locomotor activities observed in females.
Chronic dietary all populations	NOAEL= 5.7 mg/kg/day UF = 100 Chronic RfD = 0.057 mg/kg/day	FQPA SF = 1X cPAD = chr RfD ÷ FQPA SF = 0.057 mg/kg/day	Combined chronic tox/carcinogenicity - rat LOAEL = 16.9 mg/kg/day, based upon increased incidence of mineralized particles in thyroid colloid in males.
Short-term oral (1–30 days)	oral study NOAEL= 10 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain.
Short-term dermal (1–30 days)	oral study NOAEL= 10 mg/kg/day (dermal absorption rate = 7.2%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain.
Short-term inhalation (1–30 days)	oral study NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental toxicity - rat Maternal LOAEL = 30 mg/kg/day, based upon decreased body weight gain and corrected body weight gain.
Cancer (oral, dermal, inhalation)	Group E	Not applicable	No evidence of carcinogenicity in rats and mice.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.472) for the combined residues of imidacloprid, in or on a variety of raw agricultural commodities. Meat, milk, poultry and egg tolerances have also been established for the combined residues of imidacloprid. In conducting dietary exposure assessments EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The 1994–1996 and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment, but are retained as individual consumption events for acute exposure assessment. Risk assessments were conducted by EPA to assess dietary exposures from imidacloprid in food as follows:

i. *Acute exposure*. The following assumptions were made for the acute exposure assessments: A Tier 1, deterministic acute dietary exposure assessment was conducted using tolerance-level residues, 100% crop treated (PCT) information for registered and proposed commodities; and modified DEEM™ (version 2.0) processing factors for some commodities based on guideline processing studies. EPA estimated exposure based on the 95th percentile value from this deterministic exposure assessment.

ii. *Chronic exposure*. The following assumptions were made for the chronic exposure assessments: A Tier 2 partially refined, deterministic assessment using tolerance-level residue and average weighted PCT information and modified DEEM™ (version 2.0) processing factors for some commodities based on guideline processing studies.

iii. *Cancer*. A quantitative cancer aggregate risk assessment was not performed because imidacloprid is not carcinogenic.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: For the acute assessment, 100 PCT was assumed for all registered and proposed commodities. For the chronic assessment, average weighted PCT information was used for the following commodities: Apple 34%; broccoli 35%; brussels sprouts 56%; cabbage 14%; cantaloupe 31%; cauliflower 52%; collards 10%; corn, field 1%; cotton 3%; cucumber 2%; eggplant 36%; grape 32%; grapefruit 3%; honeydew 26%; kale 30%; lemon 1%; lettuce, head 49%; lime 5%; mustard greens 16%; orange 1%; pear 16%; pepper 62%; pumpkin 7%; spinach 15%; squash 7%; sugarbeet 1%; tangerine 9%; tomato 9%; watermelon 6%; wheat 1%. A default value of 1% was used for all commodities which were reported as having <1 PCT.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for imidacloprid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of imidacloprid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will generally use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a

coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health LOC.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to imidacloprid they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of imidacloprid for acute exposures are estimated to be 36.04 parts per billion (ppb) for surface water and 2.09 ppb for ground water. The EECs for chronic exposures are estimated to be 17.24 ppb for surface water and 2.09 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Imidacloprid is currently registered for use on the following residential non-dietary sites: Granular products for application to lawns and ornamental plants; ready-to-use spray for application to flowers, shrubs and house plants; plant spikes for application to indoor and outdoor residential potted plants; ready-to-use potting medium for indoor and outdoor plant containers; liquid concentrate for application to lawns, trees, shrubs and flowers; ready-to-use liquid for directed spot application to cats and dogs. In addition, there are numerous registered products intended for use by commercial applicators to residential sites. These include gel baits for cockroach control; products intended for commercial ornamental, lawn and turf pest control; products for ant control; and products used as preservatives for wood products, building materials, textiles and plastics.

As these products are intended for use by commercial applicators only, they are not be addressed in terms of residential pesticide handler. The risk assessment was conducted using the following residential exposure assumptions: EPA has determined that residential handlers are likely to be exposed to imidacloprid residues via dermal and inhalation routes during handling, mixing, loading, and applying activities. Based on the current use patterns, EPA expects duration of exposure to be short-term (1–30 days). EPA does not expect imidacloprid to result in exposure durations that would result in intermediate- or long-term exposure.

The scenarios likely to result in adult dermal and/or inhalation residential handler exposures are as follows:

- Dermal and inhalation exposure from using a granular push-type spreader.
- Dermal exposure from using potted plant spikes.
- Dermal exposure from using a plant potting medium.
- Dermal and inhalation exposure from using a garden hose-end sprayer (dermal and inhalation exposure from using a RTU trigger pump spray is expected to be negligible).
- Dermal and inhalation exposure from using a water can/bucket for soil drench applications.
- Dermal exposure from using pet spot-on.

EPA has also determined that there is potential for short-term (1 to 30 days), post-application exposure to adults and children/toddlers from the many residential uses of imidacloprid. Due to residential application practices and the half-lives observed in the turf transferable residue study, intermediate- and long-term post-application exposures are not expected. The scenarios likely to result in dermal (adult and child/toddler), and incidental non-dietary (child/toddler) short-term post-application exposures are as follows:

- Toddler oral hand-to-mouth exposure from contacting treated turf.
- Toddler incidental oral ingestion of granules.
- Toddler incidental oral ingestion of pesticide-treated soil.
- Toddler incidental oral exposure from contacting treated pet.
- Toddler dermal exposure from contacting treated turf.
- Toddler dermal exposure from hugging treated pet/contacting treated pet.
- Adult dermal exposure from contacting treated turf.
- Adult golfer dermal exposure from contacting treated turf.
- Adolescent golfer dermal exposure from contacting treated turf.
- Adult dermal exposure from contacting treated pet.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to in utero exposure in developmental studies. There is no quantitative or qualitative evidence of increased susceptibility of rat offspring in the multi-generation reproduction study. There is evidence of increased qualitative susceptibility in the rat developmental neurotoxicity study, but the concern is low since:

i. The effects in pups are well-characterized with a clear NOAEL;

ii. The pup effects occur in the presence of maternal toxicity with the same NOAEL for effects in pups and dams; and,

iii. The doses and endpoints selected for regulatory purposes are protective of the pup effects noted at higher doses in the developmental neurotoxicity study.

Therefore, there are no residual uncertainties for pre-natal/post-natal toxicity in this study.

3. *Conclusion.* There is a complete toxicity data base for imidacloprid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X for the following reasons:

- The toxicological database is complete for FQPA assessment.
- The acute dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100 PCT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.
- The chronic dietary food exposure assessment utilizes existing and proposed tolerance level residues and PCT data verified by the Agency for several existing uses. For all proposed uses, 100 PCT is assumed. The chronic assessment is somewhat refined and based on reliable data and will not underestimate exposure/risk.
- The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.
- The residential handler assessment is based upon the residential standard operating procedures (SOPs) in conjunction with chemical-specific study data in some cases and the Pesticide Handlers Exposure Database (PHED) unit exposures in other cases. The majority of the residential post-application assessment is based upon chemical-specific turf transferrable residue data or other chemical-specific post-application exposure study data. The chemical-specific study data as well as the surrogate study data used are reliable and also are not expected to underestimate risk to adults as well as to children. In a few cases where chemical-specific data were not available, the SOPs were used alone. The residential SOPs are based upon reasonable worst-case assumptions and are not expected to underestimate risk. These assessments of exposure are not likely to underestimate the resulting estimates of risk from exposure to imidacloprid.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to imidacloprid in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of imidacloprid on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to imidacloprid will occupy 26% of the aPAD for the U.S. population, 17% of the aPAD for females 13 to 49 years, 57% of the aPAD for infants < 1 year old and 67% of the aPAD for children 1–2 years. In addition, despite the potential for acute dietary exposure to imidacloprid in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of imidacloprid in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO IMIDACLOPRID

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.14	26	36.04	2.09	3,625
Females 13–49 years	0.14	17	36.04	2.09	3,483
Infants <1 year	0.14	57	36.04	2.09	603
Children 1–2 years	0.14	67	36.04	2.09	472

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imidacloprid from food will utilize 12% of the cPAD for the U.S. population, 29% of the cPAD for infants <1 year and 38% of the cPAD for children 1–2 years. Based the use pattern, chronic residential exposure to residues of imidacloprid is not expected. In addition, there is potential for chronic dietary exposure to

imidacloprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IMIDACLOPRID

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.057	12	17.24	2.09	1755
Infants <1 year	0.057	29	17.24	2.09	405
Children 1–2 years	0.057	38	17.24	2.09	353
Females 13–49 years	0.057	10	17.24	2.09	1,548

3. *Short-term risk*. The short-term aggregate risk assessment estimates risks likely to result from 1 to 30 day exposure to imidacloprid residues from food, drinking water, and residential pesticide uses. High-end estimates of the residential exposure are used in the short-term assessment, and average values are used for food and drinking water exposures.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 320 for the U.S. population, and 170 for children 1–2 years. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of imidacloprid in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC, as shown in Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO IMIDACLOPRID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate LOC	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	270	100	17.24	2.09	2,200
Children 1–2 years old	130	100	17.24	2.09	205

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Intermediate- and long-term aggregate risk assessments were not performed because, based on the current use patterns, the Agency does not expect exposure durations that would result in intermediate- or long-term exposures.

5. *Aggregate cancer risk for U.S. population*. There is no evidence of carcinogenicity to humans based on carcinogenicity studies in male and female rats and mice. The Agency concludes that pesticidal uses of imidacloprid are not likely to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imidacloprid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRLs) for imidacloprid on bananas or sunflower.

VI. Conclusion

Therefore, the tolerance is established for combined residues of imidacloprid, [[(1-[6-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on bananas at 1.0 ppm and sunflower at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0341 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 28, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII..A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number OPP–2004–0341, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct

effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: January 14, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.472 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	*	* *
Banana	1.0	12/31/07
* *	*	* *
Sunflower, seed	0.05	12/31/07
* *	*	* *

* * * * *

[FR Doc. 05–1438 Filed 1–25–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0008; FRL–7695–2]

Fluroxypyr; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of fluroxypyr 1-methylheptyl ester and its metabolite fluroxypyr in or on onion. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on onion. This regulation establishes a maximum permissible level for residues of fluroxypyr 1-methylheptyl ester and its metabolite fluroxypyr in this food commodity. The tolerance will expire and is revoked on June 30, 2007.

DATES: This regulation is effective January 26, 2005. Objections and requests for hearings must be received on or before March 28, 2005

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0008. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions above. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a,

is establishing a tolerance for combined residues of the herbicide fluroxypyr 1-methylheptyl ester 1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], in or on onion at 0.02 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Fluroxypyr 1-methylheptyl ester on onion and FFDCA Tolerances

According to the State of Colorado, due to a long string of mild winters, volunteer potatoes have become a more important problem. They are especially difficult to control in onions, and due to the noncompetitive nature of onions versus the large vigorous growth of volunteer potatoes, they result in very large yield reductions if not controlled. None of the currently registered herbicides for onions provide acceptable control of volunteer potatoes. EPA has authorized under FIFRA section 18 the use of fluroxypyr 1-methylheptyl ester on onion for control of volunteer potatoes in Colorado. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fluroxypyr 1-methylheptyl ester in or on onion. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on June 30, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on onion after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether fluroxypyr 1-methylheptyl ester meets EPA's registration requirements for use on onion or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fluroxypyr 1-methylheptyl ester by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Colorado to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fluroxypyr 1-methylheptyl ester, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fluroxypyr 1-methylheptyl ester and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of fluroxypyr 1-methylheptyl ester in or on onion at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fluroxypyr 1-methylheptyl ester used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUROXYPYR FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (All populations)	None	None	No effects were observed in oral toxicity studies (including developmental studies), which could be attributed to a single-dose exposure.
Chronic dietary (All populations)	NOAEL = 100 mg/kg/day UF = 100 Chronic RfD = 1 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 1 mg/kg/day	Chronic/oncogenicity - Rat LOAEL = 100 mg/kg/day based on kidney effects.
Short-term Incidental oral (1–30 days)	NOAEL = 100 mg/kg/day	Residential LOC for MOE = 100 Occupational = NA	Chronic/oncogenicity - Rat LOAEL = 100 mg/kg/day based on kidney effects.
Intermediate-term Incidental oral (1–6 months)	NOAEL= 100 mg/kg/day	Residential LOC for MOE = 100 Occupational = NA	Chronic/oncogenicity - Rat LOAEL = 100 mg/kg/day based on kidney effects.
Dermal (All durations)	Dermal (or oral) study NOAEL = NA	Residential LOC for MOE = NA Occupational LOC for MOE = NA	Quantification not required since 21–day dermal Rabbit NOAEL = 1,000 mg/kg/day and there is no developmental toxicity concern.
Inhalation (All durations)	Inhalation (or oral) study NOAEL= 100 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Chronic/oncogenicity - Rat LOAEL = 100 mg/kg/day based on kidney effects.
Cancer (oral, dermal, inhalation)	Fluroxypyr is classified as a ''not likely'' human carcinogen.		

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.535) for the combined residues of fluroxypyr 1-methylheptyl ester and its metabolite fluroxypyr, in or on a variety of raw agricultural commodities including barley, corn, grass, oats, sorghum, wheat, milk, and meat, kidney, meat byproducts and fat of cattle, goat, hog, horse, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from fluroxypyr 1-methylheptyl ester in food as follows:

i. *Acute exposure.* Quantitative Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. There were no toxic effects attributable to a single dose. Therefore, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. As a result, no acute risk is expected from exposure to fluroxypyr and hence no quantitative acute dietary risk assessment was performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, version 1.3) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each

commodity. The following assumptions were made: an unrefined, Tier 1 chronic-dietary exposure assessment using tolerance-level residues and assuming 100% crop treated (CT) for all commodities, and default processing factors for all commodities.

iii. *Cancer*. Fluroxypyr has been classified as not likely to be carcinogenic to humans. Therefore, a quantitative exposure assessment was not conducted to assess cancer risk.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fluroxypyr 1-methylheptyl ester in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fluroxypyr 1-methylheptyl ester.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fluroxypyr 1-methylheptyl ester they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of fluroxypyr 1-methylheptyl ester for chronic exposures are estimated to be 1.6 ppb for surface water and 0.017 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluroxypyr is currently registered for use on the following residential non-dietary sites: Residential turfgrass and recreational sites such as golf courses and sports fields. The risk assessment was conducted using the following residential exposure assumptions: Adults and children may be exposed to fluroxypyr residues from dermal contact with turf during postapplication activities. Toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during postapplication activities. Residential handlers may receive short-term dermal and inhalation exposure to fluroxypyr when mixing, loading and applying the formulations.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fluroxypyr 1-methylheptyl ester has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fluroxypyr 1-methylheptyl ester does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluroxypyr 1-methylheptyl ester has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. In a prenatal developmental study in rats the Maternal NOAEL is 300 mg/kg/day and the LOAEL is 600 mg/kg/day based on increased maternal deaths and decreased body weight gains and food consumption. The Developmental NOAEL is 600 mg/kg/day and a LOAEL was not established.

In a prenatal developmental study in rabbits the Maternal NOAEL is 500 mg/kg/day and the LOAEL is 1,000 mg/kg/day based on increased abortions. The Developmental NOAEL is 500 mg/kg/day and the LOAEL is 1,000 mg/kg/day based on increased abortions.

3. *Reproductive toxicity study*. In a reproduction and fertility study the Parental/Systemic NOAEL is 100 mg/kg/day effects (Males) and 500 mg/kg/day (Females) with a LOAEL of 500 mg/kg/day (Males) / 1,000 mg/kg/ day (Females), based on kidney effects in males and females and increased deaths in females. The Reproductive NOAEL is 750 mg/kg/day for males and 1,000 mg/kg/day for females. A LOAEL was not established. Offspring NOAEL is 500 mg/kg/day and the LOAEL is 1,000 mg/kg/day based on decreased pup weight and body weight gain and slightly lower survival.

4. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the

developmental studies with fluroxypyr. There is no evidence of increased susceptibility of rats in the reproduction study with fluroxypyr. EPA concluded there are no residual uncertainties for prenatal and/or postnatal exposure.

5. *Conclusion*. There is a complete toxicity data base for fluroxypyr and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be removed and instead, a different additional safety factor of 1X should be used. The FQPA factor is removed because: There is no evidence (quantitative/ qualitative) of increased susceptibility following in utero exposure to the acid and the ester of fluroxypyr in rats and rabbits, or following pre and/or postnatal exposure to the acid of fluroxypyr in rats; there are no concerns or residual uncertainties for pre- and/or post-natal toxicity; there is no evidence of neurotoxicity or neuropathology in the available studies; the toxicological database is complete for FQPA assessment; the chronic dietary food exposure assessment utilizes tolerance level residue estimates and assumes 100% CT for all commodities, thus not likely to underestimate exposure/risk; the dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded; and the residential exposure assessment was conducted using standard assumptions which are based on carefully reviewed data.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to fluroxypyr 1-methylheptyl ester in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of fluroxypyr 1-methylheptyl ester on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. As a result, no acute risk is expected from exposure to fluroxypyr.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluroxypyr from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for all infants, and <2% of the cPAD for children (1–2 years old), the subpopulation at greatest exposure. Based upon the use pattern, chronic (non-dietary) residential exposure to residues of fluroxypyr is not expected.In addition, there is potential for chronic dietary exposure to fluroxypyr in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUROXYPYR 1-METHYLHEPTYL ESTER

Population Subgroup	cPAD mg/ kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	1	<1%	1.6	0.017	35,000
All infants	1	<1%	1.6	0.017	10,000
Children (1–2 years old)	1	<2%	1.6	0.017	9,900

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluroxypyr is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fluroxypyr. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 31,000 for the U.S. population and 4,500 for children (1–2 years old). These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition,

short-term DWLOCs were calculated and compared to the EECs for chronic exposure of fluroxypyr in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC, as shown in Table 3.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO FLUROXYPYR 1-METHYLHEPTYL ESTER

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate LOC	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	31,000	100	1.6	0.017	35,000
Children (1–2 years old)	4,500	100	1.6	0.017	4,500

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluroxypyr is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for fluroxypyr. Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 31,000 for the U.S. population and 4,500 for children (1–2 years old). These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of fluroxypyr in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's LOC, as shown in Table 4. of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO FLUROXYPYR 1-METHYLHEPTYL ESTER

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate LOC	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	31,000	100	1.6	0.017	35,000
Children (1–2 years old)	4,500	100	1.6	0.017	4,500

5. *Aggregate cancer risk for U.S. population.* Fluroxypyr has been classified as not likely to be carcinogenic to humans. Therefore, fluroxypyr is expected to pose at most a negligible cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fluroxypyr 1-methylheptyl ester residues.

V. Other Considerations

A. Analytical Enforcement Methodology

The gas chromatography/mass selective detector (GC/MSD) enforcement method, submitted by Dow AgroSciences LLC, has been validated for the determination of residues of fluroxypyr and fluroxypyr 1-MHE as the acid equivalent in plant commodities. The method for livestock commodities has been validated for the determination of residues of fluroxypyr and fluroxypyr 1-MHE in cow milk and liver. The proposed plant and animal method is adequate for enforcement of tolerances in/on field corn, sweet corn, sorghum, range and pasture grass, and animal commodities as a result of this use. Fluroxypyr has been tested through the FDAs Multiresidue Methodology, Protocols C, D, and E. The results have been published in the *FDA Pesticide Analytical Manual, Volume I.*

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits, for residues of fluroxypyr in/on onion. Harmonization is not an issue for this time-limited tolerance.

VI. Conclusion

Therefore, the tolerance is established for combined residues of fluroxypyr 1-methylheptyl ester, fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2pyridinyl)oxy)acetate and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], in or on onion at 0.02 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0008 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 28, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number OPP–2005–0008, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the [tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as

specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 14, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.535 is amended by alphabetically adding a commodity to the table in paragraph (b) to read as follows:

§ 180.535 Fluroxypyr 1-methylheptyl ester; tolerances for residues.

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	*	* *
Onion	0.02	6/30/07
* *	*	* *

* * * * *

[FR Doc. 05–1440 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0362; FRL–7696–5]

Chlorfenapyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile in or on all foods except fruiting vegetables. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective January 26, 2005. Objections and requests for hearings must be received on or before March 28, 2005.

ADDRESSES: To submit a written objection or hearing request, follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004-0362. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET, or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, D.C. 20460–0001; telephone number: 703 305–6502; e-mail *address:sibold.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.* To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/.*

II. Background and Statutory Findings

In the **Federal Register** of July16, 2003 (68 FR 42022) (FRL–7312–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6560) by BASF Corporation, 26 Davis Drive, Research Triangle Park, North Carolina 27709. The petition requested that 40 CFR 180.513 be amended by establishing a tolerance for residues of the insecticide 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile, chlorfenapyr, in or on all foods at 0.01 parts per million (ppm). That notice included a summary of the petition prepared by BASF Corporation, the registrant. Three public comments (OPP-2003–0205–0001 (Green Party, MI), OPP–2003–0205–0002 (Fluoride Action Network), and

OPP-2003–0205–0003 (BASF Corporation)) were received in response to the registrant's petition. The substantive public comments and corresponding Agency responses are addressed in a separate document available in the docket for this action under Docket identification (ID) number OPP–2004–0362.

The Green Party, MI took exception with the use of a tolerance to provide a ''safe'' level of pesticide residues in food. The Agency acknowledges this comment but notes that the Agency is authorized by section 408(b)(A)(i) of the Federal Food, Drug, and Cosmetic Act to establish tolerances. The Fluoride Action Network (FAN) provided a number of comments on the Agency's safety determination for chlorfenapyr including raising concerns about: (1) its role in ''Mad Cow Disease'' (transmissible spongiform encephalopathies), (2) aggregate exposure to chlorfenapyr and other fluorine and bromine containing pesticides and inerts, (3) aggregate exposure to chlorfenapyr and other neurotoxicants, (4) its role in neurodegenerative diseases and disease processes, (5) the status of a conditionally required developmental neurotoxicity study, and (6) public access to risk assessments and other supporting documentation. BASF, the chlorfenapyr registrant, provided a detailed response to the issues raised by FAN.

The substantive public comments and corresponding Agency responses are addressed in a separate document available in the docket for this action under Docket identification (ID) number OPP–2004–0362. The Agency considered all of the substantive comments and saw no basis to support the claims that were made in the public comments. Again, the Agency's complete reasoning is discussed in the comment response document. As to FAN's comments regarding access to Agency documents on chlorfenapyr, EPA would note that there are extensive documents on chlorfenapyr on EPA's website. However, the Agency agrees with the comment that generally more access to information supporting this and other decisions is desirable, and in fact, the Registration Division, Office of Pesticide Programs is currently reviewing its procedures for docketing to address this concern.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of chlorfenapyr on all foods except fruiting vegetables at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by chlorfenapyr as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of September 26, 2003 (Vol. 68 No. 187 FR 55519–55527) (FRL–7320–8).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of

exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this nonlinear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer}= point of departure/ exposures) is calculated.

A summary of the toxicological endpoints for chlorfenapyr used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 26, 2003 (Vol. 68 No. 187 FR 55519–55527) (FRL–7320–8).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* The tolerance established in 40 CFR 180.513 is further amended to set tolerances for residues of chlorfenapyr in or on all foods except fruiting vegetables at 0.01 ppm. Risk assessments were conducted by EPA to assess dietary exposures from chlorfenapyr in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™Version 2.03), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each food item. The 1994–96, and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. Foods ''as consumed'' (e.g., apple pie) are linked to EPA-defined food commodities (e.g., apples, peeled fruit - cooked; fresh or baked; or wheat flour - cooked; fresh or baked) using publicly available recipe translation files developed jointly by USDA/Agricultural Research Service (ARS) and EPA. Consumption data are retained as individual consumption events for acute exposure assessment. The following assumptions were made for the acute exposure assessments: Unrefined tier 1 acute dietary exposure assessments using tolerance-level residues and assuming 100% crop treated (CT) for all registered and proposed commodities, and default DEEM™ Version 7.76 processing factors for all commodities were conducted. The acute dietary exposure estimates are below EPA's level of concern (<100% aPAD) at the 95th exposure percentile for females 13–49 years old (< 15% aPAD), and the general U.S. population (< 6% of the aPAD), and all other population subgroups. The most highly exposed population subgroup (other than females 13–49 years old) is children 1–2 years old, at < 9% of the aPAD.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each food item. The 1994–96 and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. Foods ''as consumed'' (e.g., apple pie) are linked to EPA-defined food commodities (e.g., apples, peeled fruit - cooked; fresh or baked; or wheat flour - cooked; fresh or baked) using publicly available recipe translation files developed jointly by USDA/ARS and EPA. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment. The following assumptions were made for the chronic exposure assessments: unrefined, Tier 1 chronic dietary exposure using tolerance-level residues, assuming 100% CT for all registered and proposed commodities. The Agency concluded that the chronic dietary exposure estimates are below HED's level of concern (<100% cPAD for the general U.S. population (< 23% of the cPAD) and all population subgroups. The most highly exposed population subgroup is children 1–2 years old, at < 45% of the cPAD.

2. *Dietary exposure from drinking water.* There is no concern for exposure to residues of chlorfenapyr in drinking water based on the approved, pending and proposed directions for use and chlorfenapyr's physical and chemical properties. Approved uses in the United States include applications to ornamental plants inside greenhouses, to a narrow band of soil adjacent to buildings and as a crack-and-crevice and spot treatments inside non-food/ feed structures. In food handling areas chlorfenapyr is also applied as a crack-and-crevice and spot treatment inside structures. Chlorfenapyr has extremely low water solubility (120 parts per billion at 25° C) and is also immobile in soil and does not leach because it is strongly adsorbed to all common soil types.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Non-dietary exposure to chlorfenapyr is expected to be negligible based on assessments made by EPA for all currently approved uses: ornamentals grown in greenhouses, as a termiticide, and for indoor applications for general pest control. These assessments were based on the physicochemical characteristics of the compound, the intended use patterns, and available information concerning its environmental fate. The vapor pressure of chlorfenapyr is less than 1×10^{-7} mm of mercury (Hg). Therefore, the potential for non-occupational exposure by inhalation is insignificant. These assessments also apply to the use in food/feed handling areas as a crack-crevice and spot treatment.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to chlorfenapyr and any other substances and chlorfenapyr does not appear to produce a toxic metabolite produced by other substances. EPA has also evaluated comments submitted that suggested there might be a common mechanism between chlorfenapyr and other named pesticides that cause brain effects. EPA concluded that the

evidence did not support a finding of common mechanism for chlorfenapyr and the named pesticides. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorfenapyr has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

The Agency previously identified that a developmental neurotoxicity (DNT) study was required for chlorfenapyr, based on the presence of neuropathology (CNS lesions), and neurotoxic signs seen in adult rats (males) and mice (both sexes). Considering the effects seen and the doses at which those effects occurred, the Agency concluded that a 10X safety factor is required until the data are received and evaluated.

2. *Prenatal and postnatal sensitivity.* There is no evidence (qualitative or quantitative) for increased susceptibility following *in utero* exposure in the developmental toxicity studies in rats and rabbits or prenatal/postnatal exposure in the 2-generation reproduction study in rats. In both the rat and rabbit developmental toxicity studies maternal toxicity included decreased body weight gain. No developmental toxicity was noted in rats up to the highest dose tested of 225 mg/kg/day. Developmental toxicity in rabbits (increased post implantation loss) occurred at a higher dose than maternal toxicity. In the 2-generation reproduction study in rats, parental and offspring toxicity included body weight decrements at similar doses. No reproductive effects were noted up to the highest dose tested.

3. *Conclusion.* EPA evaluated the potential for increased susceptibility of infants and children from exposure to chlorfenapyr. EPA concluded that the toxicology data base was incomplete for FQPA purposes because a required DNT has not been submitted. The DNT was required due to the presence of neuropathology (central nervous system lesions) and neurotoxic signs seen in adult rats (males) and mice (both sexes). Other than lacking the DNT study, EPA identified no residual uncertainties for prenatal/postnatal toxicity. This decision is based on the following:

- There is no evidence (qualitative or quantitative) of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in developmental toxicity studies. There is no evidence (qualitative or quantitative) of increased susceptibility of rat offspring in the multi-generation reproduction toxicity study.
- There are no concerns or residual uncertainties for prenatal and postnatal toxicity in the available developmental and 2-generation reproduction toxicity studies.
- The conservative residue assumptions used in the dietary exposure risk assessments, and the completeness of the residue chemistry database.

E. Aggregate Risks and Determination of Safety

There are no existing or proposed uses of chlorfenapyr which would result in contamination of drinking water or residential exposures. Therefore, an aggregate-exposure risk assessment was not performed.

IV. Other Considerations

A. Analytical Enforcement Methodology

Samples of composited meals from the subject study were analyzed for residues of chlorfenapyr using American Cyanamid GC/ECD (Gas Chromatograph/Electron Capture Detector) Method M 2398. This method has undergone a successful petition method validation (PMV). The reported limit of quantitation (LOQ) is 0.01 ppm. The submitted concurrent recovery data indicate that GC/ECD Method M 2398 is adequate for determining residues of chlorfenapyr *per se* in/on composited meal samples. The data requirement for multiresidue methods has been satisfied pending FDA review and acceptance of the multiresidue methods.

An adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established Codex, Canadian, or Mexican maximum residue levels (MRLs) for chlorfenapyr on all foods except fruiting vegetables at 0.01 ppm; therefore, harmonization of MRLs and U.S. tolerances is not an issue at this time.

C. Conditions

A tolerance has been previously established for Vegetables, fruiting. group 8, at 1.0 ppm. The establishment of additional residue level tolerances for chlorfenapyr on all food (as requested by the petitioner) must therefore, exclude Vegetables, fruiting, group 8. The registrant (BASF) was required to submit a revised Section F, excluding Vegetables, fruiting, group 8 commodity from the petition. The registrant (BASF) has met this condition. In addition, data are required as a condition of registration. These were previously discussed in Unit IV. C. of the final rule published in the **Federal Register** of September 26, 2003 (Vol. 68 No. 187 FR 55519–55527) (FRL–7320–8).

V. Conclusion

Therefore, the tolerance is established for residues of 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile, chlorfenapyr, in or on all foods except Vegetables, fruiting group 8 at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use

those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0362 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 28, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI. A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0362, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801*et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the**Federal Register**. This final rule is not a ''major rule '' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 24, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.513 is amended in paragraph (a) by designating the text following the paragraph heading *General* as paragraph (a)(1), and by adding paragraph (a)(2) to read as follows:

§ 180.513 Chlorfenapyr; tolerances for residues.

(a) *General.* (1) * * *

(2) A tolerance of 0.01 parts per million is established for residues of chlorfenapyr in or on all food commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling areas where food/feed products are prepared, held, processed, or served and in accordance with the following prescribed conditions:

(i) Application shall be no greater than a 0.5% active ingredient solution for spot crack and crevice use in food/feed handling establishments, where food and food products are held, processed, prepared and/or served.

(ii) Application may only be undertaken when the facility is not in operation, and provided exposed food has been covered, or removed from the area being treated prior to application.

(iii) Food contact surfaces and equipment should be throughly washed with an effective cleaning compound, and rinsed with potable water after each use of the product.

(iv) Contamination of food or food contact surfaces shall be avoided. Application excludes any direct application to any food, food packaging, or any food contact surfaces.

(v) To assure safe use, the label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

* * * * *

[FR Doc. 05–1439 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–33; MB Docket No. 04–367, RM–11070]

Radio Broadcasting Service; Genoa and Security CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Optima Communications, Inc., substitutes Channel 288C2 for Channel 288C3 at Security, Colorado and modifies Station KSKX(FM)'s license accordingly. To accommodate the upgrade, we also substitute Channel 291C3 for vacant Channel 288C3 at Genoa, Colorado. *See* 69 FR 60605, published October 12, 2004. Channel 288C2 can be allotted to Security in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 16.12 kilometers (10 miles) southwest of the community at coordinates 38–37–30 North Latitude and 104–49–00 West Longitude. Channel 291C3 can be allotted to Genoa with a site restriction of 18.4 kilometers (11.4 miles) east of the community at coordinates 39–15–35 North Latitude and 103–17–15 West Longitude.

DATES: Effective February 25, 2005. A filing window for Channel 291C3 at Genoa, Colorado will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–367, adopted January 5, 2005, and released January 10, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference

Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 288C3 and by adding Channel 291C3 at Genoa, and by removing Channel 288C3 and by adding Channel 288C2 at Security.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–1367 Filed 1–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–31; MB Docket No. 04–249; RM–10998]

Radio Broadcasting Services; Benton and Yazoo City, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document at the request of SSR Communications, Inc., licensee of Station WYAB(FM), Yazoo City, Mississippi, reallotment Channel 226A from Yazoo City, Mississippi to Benton, Mississippi, as the community's first local transmission service, and modifies the license for Station WYAB(FM) to reflect the changes. *See* 69 FR 43552 (July 21, 2004). Channel 226A can be reallotted at Benton at a site 2.2 kilometers (1.4 mile) northwest of the community at coordinates 32–50–29 NL and 90–16–28 WL.

DATES: Effective February 25, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Matthew K. Wesolowski, General Manager, SSR Communications, Incorporated, 5270 West Jones Bridge Road, Norcross, Georgia 30092–1628.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–249, adopted January 5, 2004, and released January 10, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Benton, Channel 226A, and by removing Channel 226A at Yazoo City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–1364 Filed 1–25–05; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 70, No. 16
Wednesday, January 26, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19579; Airspace Docket No. 04–ACE–69]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Newton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects a notice of proposed rulemaking that was published in the **Federal Register** on Friday, January 7, 2005, (70 FR 1399) [FR Doc. 05–374]. It corrects errors in the legal descriptions of the proposed Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Newton, KS.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 1, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–374, published on Friday, January 7, 2005, (70 FR 1399) proposed to establish a Class E airspace area designated as a surface area and to modify the existing Class E airspace area extending upward from 700 feet above the surface at Newton, KS. The proposed airspace and changes were to protect aircraft departing from and executing instrument approach procedures to Newton-City-County Airport. However, the Newton-City-County airport reference point used in both proposed airspace areas was incorrect.

Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Newton, KS, as published in the **Federal Register** on Friday, January 7, 2005 (70 FR 1399) [FR Doc. 05–374] are corrected as follows:

§ 71.1 [Corrected]

On page 1400, Column 1, second and fourth paragraphs from the bottom, third line, change ''(lat. 38°05′26″ N., long. 97°16′31″ W.)'' to read ''(lat. 38°03′26″ N., long. 97°16′31″ W.)''

Issued in Kansas City, MO, on January 11, 2005.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–1416 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–13–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. 2004–9 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment a proposed settlement of royalty rates for analog television broadcast stations retransmitted by satellite carriers under statutory license.

DATES: Comments and Notices of Intent to Participate must be submitted no later than February 25, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment and a Notice of Intent to Participate should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, S.E., Washington, DC 20559–6000. If delivered by a commercial courier, an original and five copies of a comment and a Notice of Intent to Participate must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E., between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel/CARP, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment and a Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments and Notices of Intent to Participate may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act (''SHVERA''), a part of the Consolidated Appropriations Act of 2005, Pub. L. 108–447. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over–the–air television broadcast stations to their subscribers, 17 U.S.C. 119, as well as makes a number of amendments to the license. One of the amendments to section 119 sets forth a process for adjusting the royalty fees paid by satellite carriers for retransmitting analog television network and superstations. 17 U.S.C. 119(c)(1). The law directs the Librarian of Congress to publish notice in the **Federal Register** requesting satellite carriers, distributors and copyright owners to submit to the Copyright Office any voluntary agreements they have negotiated as to the adjustment of the rates for analog stations. The Library published such a notice on

December 30, 2004, and, pursuant to the statute, requested that any agreements be submitted no later than January 10, 2005. 69 FR 78482 (December 30, 2004).

The Office has received one agreement, submitted jointly by the satellite carriers DirecTV, Inc. and EchoStar Satellite L.L.C., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. Section 119(c)(1)(D)(ii)(II) requires the Library to ''provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.'' 17 U.S.C. 119(c)(1)(D)(ii)(II). This Notice of Proposed Rulemaking (''NPRM'') fulfills the requirement.

The law further provides that the Librarian shall adopt the rates contained in the voluntary agreement as applicable to all satellite carriers, distributors and copyright owners ''unless a party with an intent to participate'' in a royalty rate adjustment proceeding before a Copyright Arbitration Royalty Panel (''CARP'') and a ''significant interest in the outcome'' of the CARP proceeding files an objection. Consequently, any party that objects to the rates proposed in this NPRM must submit the following on or before February 25, 2005:

1. A notice of objection to the rates identifying the rate or rates to which the objection applies and the reasons for the objection;

2. A statement setting forth in detail why the objector has a significant interest in the royalty rates to be adopted; and

3. A separate Notice of Intent to Participate in the CARP proceeding to adjust the rates. The CARP proceeding will commence on May 1, 2005. *See* 17 U.S.C. 119(c)(1)(F).

Only parties objecting to the royalty rates should submit the above–described documents.

A copy of the voluntary agreement can be viewed at *http://www.copyright.gov/carp/sat__rate__agreement.pdf.* The Library is not proposing for adoption the additional terms set forth in the agreement as the statute only provides for adoption of royalty rates. *See* 17 U.S.C. 119(c)(1)(D)(ii)(III).

Proposed Regulations

For the reasons set forth above, the Copyright Office proposes to amend 37 CFR chapter II as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

1. The authority citation for part 258 is amended to read as follows:

Authority: 17 U.S.C. 119, 702, 802.

2. Section 258.2 is revised to read as follows:

§ 258.2 Definitions.

(a) Commercial establishment. The term ''commercial establishment'' means an establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, oil rigs, retail stores, banks and financial institutions, supermarkets, auto and boat dealerships, and other establishments with common business areas; *provided* that the term ''commercial establishment'' shall not include a multi–unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums and prisons, all of which shall be subject to the rates applicable to private home viewing.

(b) Syndex–proof signal. A satellite retransmission of a broadcast signal shall be deemed ''syndex proof'' for purposes of § 258.3(b) if, during any semi–annual reporting period, the retransmission does not include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission.

(c) Per subscriber per month. The term ''per subscriber per month'' means each subscriber subscribing to the station in question, or to a package including such station, on the last day of a given month.

3. Section 258.3 is amended by adding new paragraphs (d) through (h) to read as follows:

§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.

* * * * *

(d) Commencing January 1, 2005, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 20 cents per subscriber per month for distant superstations.

(ii) 17 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.

(e) Commencing January 1, 2006, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 21.5 cents per subscriber per month for distant superstations.

(ii) 20 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.

(f) Commencing January 1, 2007, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 23 cents per subscriber per month for distant superstations.

(ii) 23 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(g) Commencing January 1, 2008, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) The 2007 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(ii) The 2007 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(2) For viewing in commercial establishments, the 2007 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(h) Commencing January 1, 2009, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) The 2008 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(ii) The 2008 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(2) For viewing in commercial establishments, the 2008 rate per

subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

Dated: January 21, 2005

Marybeth Peters,

Register of Copyrights.

[FR Doc. 05–1435 Filed 1–25–05; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–SC–0002/0003–200421(b); FRL–7863–6]

Approval and Promulgation of Implementation Plans South Carolina: Definitions and General Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on November 14, 2003, for the purpose of clarifying current regulations and ensuring consistency between State and Federal regulations. The proposed revisions consist of those published in the South Carolina State Register on August 28, 1998 and June 25, 1999, revising Regulation 61–62.1 Definitions and General Requirements. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 25, 2005.

ADDRESSES: Comments may be submitted by mail to: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: January 7, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–1373 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPPT–2004–0106; FRL–7332–2]

RIN 2070–AC61

TSCA Inventory Update Reporting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations. The IUR currently requires certain manufacturers (including importers) of certain chemical substances on the TSCA Chemical Substances Inventory to report data on chemical manufacturing, processing, and use every 4 years. EPA is proposing to extend the reporting cycle, modify the timing of the submission period, further clarify the new partial exemption for specific chemicals of low current interest, amend the petroleum refinery process streams partial exemption, amend the list of consumer and commercial product categories, revise the manner in which production volume would be reported, restrict reporting of processing and use information to domestic processing and use activities only, edit the polymer exemption definition, and remove the requirement to determine confidentiality of production volume in ranges.

DATES: Comments, identified by docket identification (ID) number OPPT–2004–0106, must be received on or before February 25, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OPPT–2004–0106, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov/. Follow the on-line instructions for submitting comments.

- *Agency Website: http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: oppt.ncic@epa.gov*.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number OPPT–2004–0106. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPPT–2004–0106. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not

know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCAHotline@ epa.gov*.

For technical information contact: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8789; e-mail address: *sharkey.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) chemical substances, including inorganic chemical substances, subject to reporting under the Inventory Update Reporting (IUR) regulations at 40 CFR part 710. Any use of the term manufacture in this document will encompass import, unless otherwise stated. In the past, persons that only processed chemical substances have not been required to comply with the requirements of 40 CFR part 710. These proposed amendments do not change the status of processors under the regulations at 40 CFR part 710. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers and importers, including chemical manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 710 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background

A. What Action is the Agency Taking?

The following is a brief listing of the proposed changes to the IUR contained in this action, which are described in more detail in Unit II.D. EPA is proposing to:

- Change the reporting cycle from 4 years to 5 years.
- Move the submission period from the end of the calendar year (August 25 to December 23) to the beginning (January 1 to April 30).
- Further explain the partial exemption for chemicals for which the IUR processing and use information is of low current interest by clarifying that petitions must include a written rationale for changing the exemption chemical list.
- Clarify the petroleum process stream partial exemption by adding ''refinery'' to the name of the exemption and amend the partial exemption by adding certain petroleum process streams.
- Amend the list of commercial and consumer product use categories by combining two categories into one, adding a category, and deleting a category.
- Require separate reporting of manufacture and import volumes.
- Restrict the reporting of processing and use information to domestic processing and use activities only.
- Edit the polymer exemption definition to refer solely to chemical substance identification via the Master Inventory File, by removing the reference to the 1985 edition of the Inventory.
- Remove the requirement to determine confidentiality of production volume in ranges.

B. What is the Agency's Authority for Taking this Action?

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances manufactured or processed in the United States. This inventory is known as the TSCA Chemical Substances Inventory (the TSCA Inventory). In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances in commerce at that time. In 1986, EPA promulgated the initial IUR under TSCA section 8(a) at 40 CFR part 710 (51 FR 21447, June 12, 1986) to facilitate the periodic updating of the TSCA Inventory and to support activities associated with the implementation of TSCA. In 2003, EPA promulgated extensive amendments to

the IUR (68 FR 848, January 7, 2003) (FRL–6767–4) (2003 Amendments) to collect manufacturing, processing, and use exposure-related information, and to make certain other changes.

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and processors of chemical substances and mixtures (referred to hereinafter as chemical substances) must maintain such records and submit such information as the Administrator may reasonably require. TSCA section 8(a) generally excludes small manufacturers and processors of chemical substances from the reporting requirements established in TSCA section 8(a). However, EPA is authorized by TSCA section 8(a)(3) to require TSCA section 8(a) reporting from small manufacturers and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA section 5 or 7. The standard for determining whether an entity qualifies as a small manufacturer for purposes of 40 CFR part 710 generally is defined in 40 CFR 704.3. Processors are not currently subject to the regulations at 40 CFR part 710.

C. What is the Inventory Update Reporting (IUR) Regulation?

The data reported under the IUR are used to update the information maintained on the TSCA Inventory. EPA uses the TSCA Inventory and data reported under the IUR to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities.

The IUR, as amended by the 2003 Amendments in January 2003, requires U.S. manufacturers (including importers) of chemicals listed on the TSCA Inventory to report to EPA every 4 years the identity of chemical substances manufactured during the reporting year in quantities of 25,000 pounds or more at any plant site they own or control. The IUR generally excludes several categories of substances from its reporting requirements, i.e., polymers, microorganisms, naturally occurring chemical substances, and certain natural gas substances. Plant sites are required to report information such as company name, plant site location and other identifying information, identity and production volume of the reportable chemical substance, manufacturing exposure-related information associated with each reportable chemical substance, including the physical form and maximum concentration of the chemical substance and the number of potentially exposed workers.

Manufacturers (including importers) of larger volume chemicals (i.e., 300,000 lbs. or more manufactured (including imported) during the reporting year at any plant site) are additionally required to report certain processing and use information (40 CFR 710.52(c)(4)). This information includes process or use category, NAICS code, industrial function category, percent production volume associated with each process or use category, number of use sites, number of potentially exposed workers, and consumer/commercial information such as use category, use in or on products intended for use by children, and maximum concentration.

For the 2006 submission period, inorganic chemicals, regardless of production volume, are partially exempt (i.e., submitters do not report processing and use information for inorganic chemicals). After the 2006 reporting period, the partial exemption for inorganic chemicals will no longer be applicable and submitters will fully report information on inorganic chemical substances. In addition, specifically listed petroleum process streams and other specifically listed chemical substances are partially exempt, and manufacturers of such substances are not required to report processing and use information during the 2006 submission period as well as subsequent submission periods.

D. What Changes is the Agency Proposing to Make?

Through this action, EPA is proposing to make further changes to the IUR. The following discussion describes the proposed changes to the IUR contained in this action.

1. *Reporting frequency and recordkeeping.* The IUR regulations require reporting every 4 years. The first submission period since the 2003 Amendments will occur in 2006, at which time submitters will report information generated during the 2005 reporting year. In this action, EPA is proposing to change the reporting frequency after the 2005 reporting year from every 4 years to every 5 years. This means that, instead of occurring in 2009, the second reporting year since the 2003 Amendments would be 2010 (i.e., 5 years after 2005) and would then occur every 5 years thereafter. The submission period would continue to occur in the year following the reporting year, i.e., 2011, 2016, etc.

EPA agreed to make the reporting frequency changes during interagency review of the 2003 Amendments, in an effort to further reduce the potential reporting burden. EPA estimates that a 5–year frequency would save regulated entities from $59.3 to $75.7 million over 20 years at a 3% discount rate (about a 16% reduction), and from $41.2 to $52.6 million over 20 years at a 7% discount rate, and would still meet EPA's most critical data needs (Ref. 1).

Submitters currently are required to retain records related to and including their IUR submissions for a period of 5 years, beginning with the last day of the submission period (i.e., for a submission period ending April 30, 2006, based on the submission period proposed in Unit II.D.2., submitters would be required to retain records relevant to that submission until April 30, 2011). EPA is not proposing to change this requirement; however, the Agency encourages submitters to retain records longer than 5 years to ensure that past records are available as a reference when submitters are generating subsequent submissions.

2. *Submission period.* IUR submitters are required to report on a recurring basis from August 25 to December 23 every 4 years (40 CFR 710.53). EPA is proposing to change the submission period to occur from January 1 to April 30. This change is related to the reporting year change in the 2003 Amendments from fiscal year to calendar year.

The August to December submission period was originally used because many companies' fiscal years end in July, and starting the IUR submission period in late August meant that these companies reported their most current information as soon as possible after the end of the reporting year (i.e., the year during which the information to be reported was generated). However, under the amended regulations, submitters will now report on a calendar year basis, making an earlier submission period more appropriate because it would allow sites to submit their information to EPA closer in time to the period during which it was generated. This, in turn, would allow the Agency to obtain and process the information in a more timely manner, and therefore make the information available for use closer to the time period which the information describes and therefore making the information more timely. As the chemical industry is dynamic, information which is more timely is most likely to better describe the industry than information which is less timely.

EPA seeks comment on other possible submission periods and may adopt a submission period in the final rule that differs from the proposed January through April period. Suggested alternatives should be accompanied by an explanation indicating why the alternative period more appropriately meets submitters', the Agency's, and the public's best interests than the proposed submission period.

The submission period occurs in the year following the reporting year. As described in Unit II.D.1., EPA is proposing to change the reporting frequency from every 4 years to every 5 years, which means that the reporting year, and therefore the submission period, would occur every 5 years (i.e., after the 2006 submission period, the next submission period would occur in 2011).

3. *''Low current interest'' partial exemption.* 40 CFR 710.46(b)(2) contains the requirements for the exemption of certain chemicals for which EPA has determined the IUR processing and use information to be of ''low current interest'' from reporting requirements listed in 40 CFR 710.52(c)(4). The public may ask EPA to change the list of chemicals partially exempt from reporting under 40 CFR 710.46(b)(2) (whether by adding or removing a chemical to or from the list). Currently, the request must be in writing, must identify the chemical in question, including a chemical identification number, and should include sufficient information for EPA to determine whether collection of the information in 40 CFR 710.52(c)(4) for the chemical in question is of low current interest.

In order to ensure that the public understands what requests need to contain, and to allow the Agency to make decisions about the listing/delisting of chemicals in the most expedient manner, EPA is clarifying that a request for listing/delisting must provide written rationale or justification for the request, accompanied by relevant documents, and including specific cites to information in those documents. The rationale needs to provide sufficient information upon which the Agency can assess the current need for IUR processing and use information and can make a decision concerning reporting of that information for the subject chemical. It is a petitioner's burden to demonstrate why a given chemical substance should be considered of low current interest.

In determining whether the partial exemption should apply to a particular chemical substance, EPA will consider the totality of information available for the chemical substance in question, including but not limited to information associated with one or more of the following considerations listed in 40 CFR 710.46(b)(2)(ii). Additionally, EPA is clarifying consideration 6 by proposing to delete the phrase ''by EPA or another agency or authority.'' EPA is proposing this deletion because the Agency did not intend to limit consideration 6 to Federal Government risk management actions. The amended considerations are:

(i) Whether the chemical qualifies or has qualified in past IUR collections for the reporting of the information described in 40 CFR 710.52(c)(4) (i.e., at least one site manufactures 300,000 pounds or more of the chemical).

(ii) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(iii) The information needs of EPA, other federal agencies, tribes, states, and local governments, as well as members of the public.

(iv) The availability of other complementary risk screening information.

(v) The availability of comparable processing and use information.

(vi) Whether the potential risks of the chemical substance are adequately managed.

Petitioners should also include any additional information not specifically covered by the listed considerations that would inform the Agency's decision concerning current interest in the IUR processing and use information. For instance, a chemical's physical/chemical properties may be such that exposure is unlikely, and the IUR processing and use information is likely to be of low interest. In its review of the petition, the Agency will consider each petitioned chemical substance individually, will conduct a limited search for information not provided in the petition to see if there are additional concerns or issues, and will make a decision based upon the totality of information identified.

It is important to note that the addition of a chemical substance under this partial exemption will not necessarily be based on the potential risks of the chemical and that the Agency will not perform a formal risk analysis as part of the petition review, but that EPA's decision will be based on the Agency's current assessment of the need for collecting IUR processing and use information for that chemical, based upon the totality of information considered during the petition review process. Additionally, interest in a chemical or a chemical's processing and use information may increase in the future, at which time EPA will reconsider the applicability of this partial exemption for those chemicals.

EPA is making this clarification in reaction to the first round of requests for consideration which were received by December 30, 2003. It was always EPA's intent that the requests contain supporting rationale associated with the request, and that the rationale specifically address at least the considerations outlined in 40 CFR 710.46(b)(2)(ii). Instead, EPA has received a number of requests that only cite the existence of another document, e.g., an Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) Initial Assessment Report (SIAR), as support, without any discussion of the document's relevance to the considerations or why the document supports a determination of low current interest. It is a requester's burden to demonstrate in a clear, well supported manner, why a given chemical substance should be considered of low current interest. EPA is today proposing to clarify the required contents of a petition for this exemption.

4. *Partially exempt petroleum refinery process streams.* Certain listed petroleum refinery process streams are partially exempt from reporting under IUR. Specifically, they are exempt from the downstream processing and use reporting requirements described in 40 CFR 710.52(c)(4) (see 40 CFR 710.46(b)(1)). This list of substances was derived from the 1983 publication of the American Petroleum Institute (API) entitled ''Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA)'' (Ref. 2). In order to update the list in 40 CFR 710.46(b)(1), and in response to suggestions from API (Ref. 3), EPA is proposing to change the exemption name by adding the term ''refinery'' and to amend the list to add certain petroleum process streams which have been added to the TSCA Inventory since the 1983 publication was compiled. Additionally, EPA is proposing to add two petroleum refinery process streams that were inadvertently left off the initial partial exemption list established by 68 FR 854 (CAS numbers: 68919–16–4 and 61789–60–4). The two substances are listed in the 1983 publication and meet the requirements for listing under this exemption.

EPA is proposing to change the name of the partial exemption to ''petroleum refinery process streams'' to clarify the

types of covered substances, which are restricted to petroleum refinery process streams. This change is consistent with EPA's January 1978 Addendum I to the TSCA Candidate List of Chemical Substances, entitled ''Generic Terms Covering Petroleum Refinery Process Streams'' (Addendum I) (Ref. 4). The decision criteria used to develop both the current list in 40 CFR 710.46(b)(1) and the proposed additions to the list were applied in a manner consistent with Addendum I.

API identified 125 potential petroleum refinery process streams that were on the TSCA Inventory as of July 2003, but were not included in the 1983 API publication. API stated that ''the 1983 document comprised substances that were included in the original TSCA Inventory (May 1979) or in the Cumulative Supplement II (May 1982). In the over twenty years since then, petroleum refinery process streams have been added to the TSCA Inventory when companies have submitted premanufacture notifications (PMNs) and subsequent notices of commencement (NOCs) for new chemical substances'' (Ref. 3).

EPA reviewed API's list of identified substances (Ref. 5), and determined that three are already included in the partial exemption for certain petroleum refinery process streams. The Chemical Abstract Service (CAS) numbers for these chemicals are: 68187–60–0, 68918–98–9, and 68921–09–5. The Agency has tentatively determined that the following 25 substances are considered petroleum refinery process streams for the purposes of reporting under IUR and is proposing to add these substances to the partial exemption list in 40 CFR 710.46(b)(1): 67254–74–4, 67891–81–0, 67891–86–5, 68476–27–7, 68477–98–5, 68477–99–6, 68478–31–9, 68513–03–1, 68514–39–6, 73138–65–5, 92045–43–7, 92045–58–4, 92062–09–4, 98859–55–3, 98859–56–4, 101316–73–8, 164907–78–2, 164907–79–3, 178603–63–9, 178603–64–0, 178603–65–1, 178603–66–2, 212210–93–0, 221120–39–4, and 445411–73–4.

EPA also determined that the following 14 substances are already fully exempt from IUR reporting under the polymer exemption at 40 CFR 710.46(a)(1): 68911–05–7, 68938–55–6, 68952–09–0, 69430–34–8, 69430–35–9, 71302–83–5, 74552–82–2, 88526–47–0, 93685–79–1, 100815–94–9, 106233–12–9, 106233–13–0, 120928–15–6, and 163440–93–5.

The Agency has also tentatively determined that the remaining 83 substances are not considered petroleum refinery process streams for purposes of reporting under IUR and are therefore not eligible for the partial exemption under 40 CFR 710.46(b)(1) (Ref 5). In making this determination, EPA would like to point out that petrochemicals are not considered petroleum process streams for the purposes of reporting under IUR. Qualifying petroleum process streams are produced only in a petroleum refinery, are further refined at the same site, and are processed and used in closed equipment, or are used as fuel. Petrochemicals often have names sounding similar to petroleum refinery process streams, but can be made using a synthetic process such as a chemical reaction. A petrochemical encompasses a wide variety of chemical substances processed and used in a variety of venues, may be processed and used in different manners in the venues with differing likelihoods of exposure, and may be solids or otherwise not require that the equipment in which they are processed be closed. The petrochemical thereby may have a variety of uses and exposure scenarios, and is not limited to being site-limited or used as a fuel, as are the petroleum refinery process streams.

These 83 substances not being added to the petroleum refinery process streams exemption are identified by CAS number and fit into one or more of four categories (the substance is listed under the category most appropriate):

(i) The chemical substance consists of a complex mixture of one class of hydrocarbons, e.g., all alkanes or all alkenes (with defined carbon number ranges) and aromatic hydrocarbons (without defined carbon number range), which do not specify petroleum as a source material in the chemical name, CAS numbers: 68333–90–4, 68409–73–4, 68551–15–5, 68551–16–6, 68551–17–7, 68551–18–8, 68551–19–9, 68551–20–2, 68603–35–0, 68989–41–3, 68990–23–8, 70024–92–9, 72162–34–6, 73138–29–1, 74664–93–0, 90622–46–1, 93762–80–2, 93924–07–3, 93924–10–8, 93924–11–9, 129813–66–7, 129813–67–8, 131459–42–2, 289711–49–5, 289711–48–4, 329909–27–5, 426260–76–6.

(ii) The chemical substance is a well defined alkylbenzene, or is an alkylbenzene fractionation product or distillation residues. Alkylbenzenes are typical downstream petrochemical products that are made synthetically from benzene and paraffinic hydrocarbons in a chemical process that does not involve refinery processing, CAS numbers: 67774–74–7, 68855–24–3, 68936–98–1, 68936–99–2, 68987–40–6, 70356–32–0, 85117–41–5, 85117–43–7, 94094–93–6, 102783–85–7, 115733–08–9, 125025–88–9, 129813–59–8, 129813–60–1,129813–61–2, 129813–62–3, 129813–63–4, 146865–37–4, 148520–81–4, 151911–58–9, 151911–60–3, 151911–59–0, 156105–29–2.

(iii) The chemical substance includes the chemical modification terms sulfated, bisulfited, sulfurized, sulfonated, esters, and reaction products etc., are not substances produced within the scope of petroleum refining operations, but rather they are considered to be products from other chemical manufacturing processes, CAS numbers: 68131–94–2, 68131–95–3, 68131–96–4, 68131–97–5, 68201–32–1, 68201–54–7, 68425–32–1, 68442–08–0, 68477–23–6, 68478–11–5, 68603–04–3, 68603–05–4, 68603–06–5, 68603–07–6, 68606–23–5, 68606–38–2, 68649–47–8, 68649–48–9, 68649–49–0, 68814–88–0, 68815–10–1, 68920–58–1, 68990–36–3, 71820–39–8, 73138–64–4, 73665–18–6, 96471–07–7, 102479–87–8, 108083–43–8, 108083–44–9, 111163–74–7, 152699–00–8, 216977–01–4 (Ref. 5).

(iv) The chemical substance is derived using a chemical process (a Fischer-Tropsch process) from a non-petroleum source, CAS number: 277316–99–1 (Ref. 5).

5. *Consumer and commercial product categories.* Certain submitters must designate the commercial and consumer product category or categories that best describe the commercial and consumer products in which each reportable chemical substance is used (see 40 CFR 710.52(c)(4)(iii)(A)). Following promulgation of the 2003 Amendments, EPA had discussions with the American Chemistry Council, the Consumer Specialty Products Association, and The Fertilizer Institute about these categories. In light of these discussions and EPA's own research, the Agency is proposing the following changes to the list of categories:

(i) Combine the categories of ''Soaps and Detergents'' and ''Polishes and Sanitation Goods'' to form a new category called ''Cleaning Products (non-pesticidal).'' EPA further considered these two categories, and believes that manufacturers might have difficulty differentiating between downstream categories which are so similar. Both categories relate to cleaning goods. Combining the categories does not reduce the utility of the information to EPA, and it allows manufacturers to avoid making difficult distinctions.

(ii) Remove the category ''Photographic chemicals.'' This deletion is in recognition of the changing photography industry. The Photo Marketing Association notes that traditional film photofinishing in the U.S. peaked in 2000, and has been declining since. Declines of 5–10%

annually should continue through at least 2006 (Ref. 6). EPA believes that this decline indicates that consumer/commercial exposure issues associated with photographic chemicals may be of diminished importance, and therefore proposes to eliminate ''Photographic chemicals'' as a category. As a result of this revision, photosensitive chemicals will be reported in the ''Other'' category, designated as U33. The Agency will be able to distinguish these chemicals by the distinctive NAICS numbers associated with use of these chemical substances.

(iii) Add a category called ''Agricultural products (non-pesticidal).'' The Fertilizer Institute identified that a major use of chemicals for consumer/commercial uses is in agriculture, an area not covered by the consumer/commercial categories. EPA is proposing to add a category for ''agricultural products (non-pesticidal)'' to ensure that this end use would not be combined into the ''other'' category.

6. *Production volume reporting.* Submitters are currently required to report the total production volume (i.e., the sum of manufactured and imported volumes) for each reportable chemical substance (40 CFR 710.52(c)(3)(iv)) and a statement indicating whether the substance is manufactured in the U.S., imported into the U.S., or both manufactured and imported into the U.S. (40 CFR 710.52(c)(3)(ii)). Prior to the 2003 Amendments, submitters were required to report the manufactured volume separately from the imported volume for each reportable chemical substance. EPA often has need for either import or domestic manufacture information on chemical substances, thus the Agency is proposing to return to the previous method of reporting manufactured volume separately from imported volume. As these volumes were previously reported separately, EPA expects that these values are reasonably ascertainable and that any increase in burden is negligible (Ref. 1).

Many chemicals are both manufactured domestically and imported at the same site. The ability to differentiate between domestically manufactured and imported volumes is important to understand the nature of chemical production in the U.S. This information is used to characterize the markets and structure of the chemical industry in the U.S., providing context for decision makers as they consider alternative policy choices. Additionally, the separation between domestically manufactured and imported volumes is important for initial exposure evaluations of a chemical and for assessing international trade implications.

7. *Reporting processing and use information for domestic activities only.* Submitters with production volumes of 300,000 lbs. or greater for a reportable chemical substance are currently required to report processing and use information (i.e., the information to be reported under 40 CFR 710.52(c)(4)), without restrictions, to the extent the information is readily obtainable. EPA is proposing to limit the information to be reported under 40 CFR 710.52(c)(4) to domestic processing and use activities only. Submitters would not report on processing or use activities that occur outside the U.S. In other words, the industrial processing or use operations (40 CFR 710.52(c)(4)(i)(A)) and commercial and consumer uses (40 CFR 710.52(c)(4)(ii)(A)) reported by submitters would be domestic operations and uses. For example, if a manufacturer produces 350,000 lbs. of a reportable chemical substance, directly exports 100,000 lbs., and sells 250,000 lbs. within the U.S., the manufacturer would have to report processing and use information for the 250,000 lbs. sold within the U.S.

EPA is proposing to limit the reporting of information to domestic processing and use activities only for two main reasons. First, the IUR collection does not distinguish between domestic and foreign activities; there is no way to identify if the information submitted covers domestic or foreign activities. EPA generally has a stronger interest in domestic processing and use information. Second, removing the need to report on foreign processing and use activities reduces the burden associated with reporting to the IUR (Ref. 1).

8. *Polymer exemption.* Chemical substances meeting the definition for polymers included in 40 CFR 710.46(a)(1) are fully exempt from reporting under the IUR. EPA is proposing to change the references included in the polymer definition from the ''1985 edition of the Inventory or the Master Inventory File'' to solely the more general and current ''Master Inventory File'' by removing the reference to the 1985 edition of the Inventory. The Master Inventory File has been regularly updated since the 1985 edition of the Inventory was published, and is the more appropriate reference for use within the IUR polymer exemption.

9. *Production volume range confidentiality claims.* Submitters who claim production volume as confidential are currently additionally required to indicate whether they are also claiming a specified range within which the production volume falls as confidential (40 CFR 710.52 (c)(3)(v)). EPA added this provision in the 2003 Amendments in an effort to promote the release of more general production volume information for an individual plant site. EPA is now proposing to remove this requirement. EPA currently releases aggregated, chemical-specific, TSCA production volume information in ranges that are similar to, but not the same as, the ranges specified in 40 CFR 710.52(c)(3)(v). The Agency has a concern that the existence of competing sets of ranges, some with confidentiality claims and some without, would complicate the release of aggregated production volume information and reduce the amount of useful information available to the public. As the intent in adding this provision in the 2003 Amendments was to increase the information available to the public, the Agency is proposing to remove this requirement (although specific production volumes could still be claimed as confidential). Information claimed as CBI under 40 CFR 710.58 will not be disclosed by EPA except in accordance with the procedures set forth at 40 CFR part 2.

III. Materials in the Rulemaking Record

1. USEPA, ''Economic Analysis of the IUR Revisions Proposed Rule,'' Office of Pollution Prevention and Toxics, September 2004.

2. American Petroleum Institute, ''Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA),'' Health and Safety Regulation Committee Task Force on Toxic Substances Control, February 1985.

3. E-mail from Glen Barrett, American Petroleum Institute, to Susan Sharkey, EPA, ''Proposed Petroleum Refinery Process Streams to be Added to Streams Listed in the IURA Rule (i.e., CFR 710.46(b)(1)),'' February 25, 2004.

4. USEPA, ''Toxic Substances Control Act (TSCA) PL 94–469 Candidate List of Chemical Substances Addendum I Generic Terms Covering Petroleum Refinery Process Streams,'' January 1978.

5. USEPA, ''Technical Support Document Inventory Update Rule Petroleum Refinery Process Stream Partial Exemption Added Refinery Process Chemicals'' OPPT, April 17, 2004.

6. Photo Marketing Association International, ''Photo Industry 2004: Review and Forecast,'' February 2004, available at *http://www.pmai.org/new_pma/Marketing_Research/Photo%20Industry%202004.pdf.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this action is not a ''significant regulatory action'' subject to review by OMB because it does not meet the criteria in section 3(f) of the Executive Order.

EPA has prepared an economic analysis of the potential impacts of this action, which is contained in a document entitled *Economic Analysis of the IUR Revisions Proposed Rule* (Ref. 1). This document is available as a part of the public version of the official record for this action and is briefly summarized here.

These revisions will reduce IUR reporting costs. The quantified portions of the rule are estimated to save $6 million to $7 million per year when annualized over the next 20 years at a 3% or a 7% discount rate. Most of the savings of these revisions will accrue to the chemical industry in the form of decreased costs of complying with the IUR. There will also be some savings to EPA in the form of decreased costs to administer the regulation and maintain the collected data.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to the IUR have already been approved by OMB pursuant to the PRA under OMB control number 2070–0162. This action would not impose any burden requiring additional OMB approval. Instead, this action would reduce reporting burden by 113,000 to 123,000 hours in the 2006 reporting cycle and 112,000 to 121,000 hours in subsequent reporting cycles. This reduction is out of a total burden of 1,300,000 to 1,658,000 hours in the 2006 reporting cycle, and 1,189,000 to 1,516,000 in future reporting cycles.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division (2822), Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this action would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is summarized below.

The term ''small entities'' includes small businesses, small not-for-profit organizations, and small governmental jurisdictions, but because not-for-profit organizations and governmental jurisdictions will not be affected by this rule, ''small entity'' in this analysis is synonymous with small business.

Small manufacturers that fully meet the 40 CFR 704.3 definition are generally exempt from reporting under IUR, and thus are not significantly impacted by IUR reporting. Nevertheless, this rulemaking is expected to reduce IUR reporting costs for businesses of all sizes. Thus, EPA concludes that these revisions will not result in significant adverse effects on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. As described in Unit IV.A., the rule is expected to decrease expenditures by $6 million to $7 million per year. EPA has also determined that the rule would not significantly or uniquely affect small governments and is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

This proposed rule, if finalized, would not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule, if finalized, also would not have tribal implications because it is not expected to have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

Since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12988

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize

potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: January 6, 2005.

Susan B. Hazen.

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 710—[AMENDED]

1. The authority citation for part 710 would continue to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 710.43 [Amended]

2. Section 710.43 is amended by revising the phrase ''4–year intervals'' to read ''5–year intervals'' in the definition for ''reporting year.''

3. Section 710.46 is amended as follows:

a. By removing the phrase ''the 1985 edition of the Inventory or in'' in paragraph (a)(1)(i).

b. By removing the phrase ''the 1985 edition of the Inventory or'' in paragraph (a)(1)(ii).

c. By revising the paragraph heading for paragraph (b)(1).

d. By revising the table title to the table in paragraph (b)(1).

e. By relisting in ascending order the entries for 68514–36–3, 68514–37–4, 68514–38–5, 68814–87–9, and 68921–09–5 and adding entries in ascending order to the table in paragraph (b)(1).

f. By revising paragraph (b)(2)(ii)(F).

g. By removing the third, fourth, and fifth sentences in paragraph (b)(2)(iii)(A) and adding a new third sentence.

h. By revising the phrase ''4–year intervals'' to read ''5–year intervals'' in paragraph (b)(2)(iii)(C).

§ 710.46 Chemical substances for which information must be reported.

* * * * *

(b) * * *

(1) *Petroleum refinery process streams.* * * *

CAS NUMBERS OF PARTIALLY EXEMPT SUBSTANCES TERMED ''PETROLEUM REFINERY PROCESS STREAMS'' FOR PURPOSES OF INVENTORY UPDATE REPORTING

CAS No.	Product
61789–60–4	Pitch
* * * * *	
67254–74–4	Naphthenic oils
* * * * *	
67891–81–0	Distillates (petroleum), oxidized light, potassium salts
* * * * *	
67891–86–5	Hydrocarbon waxes (petroleum), oxidized, compds. with diisopropanolamine
* * * * *	
68476–27–7	Fuel gases, amine system residues
* * * * *	
68477–98–5	Gases (petroleum), hydrotreater blend oil recycle, hydrogen-nitrogen rich
68477–99–6	Gases (petroleum), isomerized naphtha fractionater, C4-rich, hydrogen sulfide- free
* * * * *	
68478–31–9	Tail gas (petroleum), isomerized naphtha fractionates, hydrogen sulfide-free
* * * * *	
68513–03–1	Naphtha (petroleum), light catalytic reformed, arom.-free
* * * * *	
68514–39–6	Naphtha (petroleum), light steam-cracked, isoprene-rich
* * * * *	
68919–16–4	Hydrocarbons, catalytic alkylation, by-products, C3-6
* * * * *	
73138–65–5	Hydrocarbon waxes (petroleum), oxidized, magnesium salts
92045–43–7	Lubricating oils (petroleum), hydrocracked nonarom. solvent deparaffined
92045–58–4	Naphtha (petroleum), isomerization, C6-fraction
92062–09–4	Slack wax (petroleum), hydrotreated
* * * * *	
98859–55–3	Distillates (petroleum), oxidized heavy, compds. with diethanolamine
98859–56–4	Distillates (petroleum), oxidized heavy, sodium salts
101316–73–8	Lubricating oils (petroleum), used, noncatalytically refined
164907–78–2	Extracts (petroleum), asphaltene-low vacuum residue solvent
164907–79–3	Residues (petroleum), vacuum, asphaltene-low
178603–63–9	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C10-25
178603–64–0	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C15-30, branched and cyclic
178603–65–1	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C20-40, branched and cyclic
178603–66–2	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C25-55, branched and cyclic
212210–93–0	Solvent naphtha (petroleum), heavy arom., distn. residues
221120–39–4	Distillates (petroleum), cracked steam-cracked, C5-12 fraction
445411–73–4	Gas oils (petroleum), vacuum, hydrocracked, hydroisomerized, hydrogenated, C10-25, branched and cyclic

* * * * *

(2) * * *

(ii) * * *

(F) Whether the potential risks of the chemical substance are adequately managed.

(iii) * * *

(A) * * * Requests must identify the chemical in question, as well as its CAS number or other chemical identification number as identified in

§ 710.52(c)(3)(i), and must contain a written rationale for the request that provides sufficient specific information, addressing the considerations listed in § 710.46(b)(2)(ii), including cites and relevant documents, to demonstrate to EPA that the collection of the information in § 710.52(c)(4) for the chemical in question either is or is not of low current interest. * * *

* * * * *

§ 710.48 [Amended]

4. Section 710.48 is amended by revising the phrase ''4–year intervals'' to read ''5–year intervals'' in paragraph (a).

5. Section 710.52 is amended as follows:

a. By revising the phrase ''4–year intervals'' to read ''5–year intervals'' in the first and last sentences of the introductory text, and in the introductory text of paragraphs (c)(2), (c)(3), and (c)(4).

b. By revising paragraph (c)(3)(iv).

c. By removing paragraph (c)(3)(v) and redesignating existing paragraphs (c)(3)(vi), (c)(3)(vii), (c)(3)(viii), and (c)(3)(ix) as paragraphs (c)(3)(v), (c)(3)(vi), (c)(3)(vii), and (c)(3)(viii), respectively.

d. By revising the phrase ''paragraph (c)(3)(viii)'' to read ''paragraph (c)(3)(vii)'' in newly designated paragraph (c)(3)(viii).

e. By adding a sentence after the third sentence in paragraph (c)(4).

f. By revising the table in paragraph (c)(4)(ii)(A).

§ 710.52 Reporting information to EPA.

* * * * *

(c) * * *

(3) * * *

(iv) The total volume (in pounds) of each reportable chemical substance manufactured and imported at each site. The total manufactured volume (not including imported volume) and the total imported volume must be separately reported. This amount must be reported to two significant figures of accuracy provided that the reported figures are within ±10% of the actual volume.

* * * * *

(4) * * * Information reported in response to this paragraph is limited to domestic (i.e., within the United States) processing and use activities. * * *

* * * * *

(ii) * * *

(A) * * *

CODES FOR REPORTING COMMERCIAL AND CONSUMER PRODUCT CATEGORIES

Codes	Category
C01	Adhesives and sealants
C02	Agricultural products (non-pesticidal)
C03	Artists' supplies
C04	Automotive care products
C05	Cleaning products (non-pesticidal)
C06	Electrical and electronic products
C07	Fabrics, textiles and apparel
C08	Glass and ceramic products
C09	Lawn and garden products (non-pesticidal)
C10	Leather products
C11	Lubricants, greases and fuel additives
C12	Metal products
C13	Paints and coatings
C14	Paper products
C15	Rubber and plastic products
C16	Transportation products
C17	Wood and wood furniture
C18	Other

* * * * *

6. By revising § 710.53 to read as follows:

§ 710.53 When to report.

All information reported to EPA in response to the requirements of this subpart must be submitted during an applicable submission period. The first submission period is from January 1, 2006, to April 30, 2006. Subsequent recurring submission periods are from January 1 to April 30 at 5–year intervals after the first submission period. Any person described in § 710.48(a) must report during each submission period for each chemical substance described in § 710.45 that the person manufactured (including imported) during the preceding calendar year (i.e., the ''reporting year'').

7. By revising § 710.57 to read as follows:

§ 710.57 Reporting requirements.

Each person who is subject to the reporting requirements of this subpart must retain records that document any information reported to EPA. Records relevant to reporting during a submission period must be retained for a period of 5 years beginning on the last day of the submission period. Submitters are encouraged to retain their records longer than 5 years to ensure that past records are available as a reference when new submissions are being generated.

[FR Doc. 05–1380 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–28, MB Docket No.05–4, RM–11133]

Radio Broadcasting Services; Hagerstown and Myersville, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a petition for rulemaking filed by Manning Broadcasting, Inc., licensee of Station WARX (FM), Hagerstown, Maryland, proposing the reallotment of Channel 295B from Hagerstown to Myersville, Maryland, as the community's first local transmission service, and the modification of the license for Station WARX (FM) to reflect the new community. Channel 295B has been proposed to be reallotted at Myersville at a site 3.9 kilometers (2.4 miles) west of the community at coordinates 39–29–57 NL and 77–36–42 WL.

DATES: Comments or counterproposals must be filed on or before March 3, 2005, and reply comments on or before March 18, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David D. Oxenford, Esq., Veronica D. McLaughlin-Tippett, Esq., Shaw Pittmann, LLP, 2300 N Street, NW., Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 05–4, adopted January 5, 2005, and released January 10, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445

Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by removing Channel 295B at Hagerstown and adding Myersville, Channel 295B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–1369 Filed 1–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–27; MB Docket No. 05–3; RM–11132]

Radio Broadcasting Services; Grand Isle and St. Albans, Tupper Lake and Vermont, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Champlain Communications Corp. (''Petitioner''), licensee of Station WLFE–FM, Channel 272A, St. Albans, Vermont. Petitioner requests that the Commission upgrade Channel 272A to Channel 272C3 and reallot Channel 272C3 from St. Albans to Grand Isle, Vermont, thus providing Grand Isle with its first local aural transmission service. To accommodate the foregoing changes, FM Station WRGR, Channel 272A, Tupper Lake, New York, has agreed to substitute Channel 271C3 for Channel 272A and move its transmitter to a new site. The coordinates for proposed Channel 272C3 at Grand Isle, Vermont, are 44–44–07 NL and 73–30–57 WL with a site restriction of 17.4 kilometers (10.8 miles) west of Grand Isle. The coordinates for proposed Channel 271C3 at Tupper Lake are 44–07–21 NL and 74–31–52 WL, with a site restriction of 12.6 kilometers (7.8 miles) southwest of Tupper Lake.

DATES: Comments must be filed on or before March 3, 2005, and reply comments on or before March 18, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner's counsel, as follows: Barry A. Friedman, Esq., Thompson Hine LLP; 1920 N Street, NW., Suite 800; Washington, DC 20036–1600.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–3, adopted January 5, 2005, and released January 10, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 272A and by adding Channel 271C3 at Tupper Lake.

3. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing St. Albans, Channel 272A and by adding Grand Isle, Channel 272C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–1358 Filed 1–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–29, MB Docket No.05–5, RM–11139]

Radio Broadcasting Services; Morro Bay and Oceano, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a petition for rulemaking filed by Lazer Broadcasting Corporation, licensee of Station KLMM (FM), Morro Bay, California, proposing the reallotment of Channel 231A from Morro Bay to Oceano, California, as the community's first local transmission service, and the modification of the license for Station KLMM (FM) to reflect the new community. Channel 231A has been proposed to be reallotted at Oceano at a site 12.4 kilometers (7.7 miles) south of the community at coordinates 34–59–20 NL and 120–37–56 WL.

DATES: Comments or counterproposals must be filed on or before March 3, 2005, and reply comments on or before March 18, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry C. Martin, Esq., Anne Goodwin Crump, Esq., Fletcher, Heald and Hildreth, PLC, 1300 North 17th Street, Eleventh Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 05–5, adopted January 5, 2005, and released January 10, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 231A at Morro Bay and adding Oceano, Channel 231A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–1356 Filed 1–25–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 011805B]

RIN 0648–AS58

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2005 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by March 29, 2005, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Mr. Donald Hansen, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, telephone: 503–820–2280 (voice) or 503–820–2299 (fax). For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

March 1, 2005: ''Review of 2004 Ocean Salmon Fisheries'' and ''Preseason Report I-Stock Abundance Analysis for 2005 Ocean Salmon Fisheries'' will be available to the public from the Council office and posted on the Council website at *http://www.pcouncil.org*.

March 22, 2005: ''Preseason Report II-Analysis of Proposed Regulatory Options for 2005 Ocean Salmon Fisheries'' and public hearing schedule will be mailed to the public and posted on the Council website at *http://www.pcouncil.org*. The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 22, 2005: Council adopted ocean salmon fishing management measures will be posted on the Council website at *http://www.pcouncil.org*.

May 1, 2005: Federal regulations will be implemented and ''Preseason Report III-Analysis of Council Adopted Ocean Salmon Management Measures for 2005 Ocean Salmon Fisheries'' will be available from the Council office and posted on the Council web site at *http://www.pcouncil.org*.

Meetings and Hearings

January 18–21, 2005: The Salmon Technical Team (STT) met at the Council office in a public work session to draft ''Review of 2004 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2005 ocean salmon fisheries.

February 8–11, 2005: The STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2005 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2005 ocean salmon fisheries.

March 6–11, 2005: The Council and advisory entities will meet at the Doubletree Hotel Sacramento, 2001 Point West Way, Sacramento, CA 95815, Phone: (916) 929–8855, to adopt the 2005 salmon management options for public review.

March 28–30, 2005: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. at the following locations, with sites and dates to be specified at a later time: Westport, WA; Coos Bay, OR, and Fort Bragg, CA. Additional hearings may be scheduled at a later date.

April 3–8, 2005: Council and advisory entities meet at the Sheraton Tacoma Hotel, 1320 Broadway Plaza, Tacoma, WA 98402 Phone: (253) 572–3200, to adopt 2005 management measures for implementation by NMFS.

April 5, 2005: Testimony on the management options is taken during the Council meeting at the Sheraton Tacoma Hotel, Tacoma, WA.

Although non emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (voice), or 503–820–2299 (fax) at least five days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: January 18, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–1337 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 16

Wednesday, January 26, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foregin Aid; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Wednesday, February 16, 2005 (8:45 a.m. to 3:30 p.m.).

Location: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

The meeting's keynote address will outline some of the Administrator's major priorities, including the new fragile states policy and anticorruption strategy.

Following a presentation on USAID's new anticorruption strategy by Barbara Turner, Deputy Assistant Administrator in the Bureau for Policy and Program Coordination, John Sullivan from the Center for International Private Enterprise (ACVFA member) will moderate a panel. Participants will include Nancy Boswell from Transparency International, Daniel Kaufman from the World Bank Institute, and Neil Levine from USAID's Office of Democracy and Governance. Key mandates of the new strategy include broader efforts to tackle the economic and political conditions that facilitate grand corruption and integrating anticorruption objectives and activities more carefully into all of the Agency's development work.

After lunch, Joanne Giordano, Senior Advisor to the Administrator, John Gardner, General Counsel, USAID, and John Niemeyer, Attorney Advisor, Office of the General Counsel, will provide an overview of the proposed marking policy and graphic standards followed by an opportunity for questions and comments.

Participants will have an opportunity to ask questions of the speakers and participate in the discussion.

The meeting is free and open to the public. Persons wishing to attend the meeting can register online at *http://www.usaid.gov/about_usaid/acvfa* or e-mail their name to *barbara@websterconsulting.com*.

Dated: January 21, 2005.

Jocelyn M. Rowe,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. 05–1450 Filed 1–25–05; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of Draft Pub. L. 480 Title II Program Proposal Guidelines (FY06)

Notice

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480, as amended), notice is hereby given that the Draft Guidelines for Title II Program Proposals are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, Agency for International Development, RRB 7.06–153, 1300 Pennsylvania Avenue, Washington, DC 20523–7600. Individuals who have questions or comments on the draft guidelines should contact Carell Laurent at the above address, at (202) 712–1643 or *claurent@usaid.gov*.

The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: January 13, 2005.

Angelique Crumbly,

Chief, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 05–1451 Filed 1–25–05; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on February 17 at 6:30 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: February 17, 2005.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Forest Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include applying for RAC membership, receiving project proposals, reviewing project status and receiving public comment. If the meeting time or location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, Sanders County Ledger, Daily Interlake, Missoulian, and River Journal.

Dated: January 5, 2005.

Randy Hojem,

Designated Federal Official, District Ranger, Plains Ranger District.

[FR Doc. 05–1376 Filed 1–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, CA, USDA Forest Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, February 10, 2005, in Susanville, California for a business meeting. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Contact Robert Andrews, District Ranger, Designated Federal Officer, at (530) 257–4188; or Public Affairs Officer, Heidi Perry, at (530) 252–6604.

SUPPLEMENTARY INFORMATION: The business meeting on February 10th will begin at 9 a.m., at the Susanville Interagency Fire Center, 1491 5th Street, Susanville, CA 96130. There will be discussions regarding the re-appointment process; review of project monitoring plans; funding, payment and monitoring processes; and field trip projects reviews schedule for the summer. Time will also be set aside for public comments at the beginning of the meeting.

Elizabeth Norton,

Acting Forest Supervisor.

[FR Doc. 05–1388 Filed 1–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 050111007–5007–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2004 Annual Surveys in the Manufacturing Area. The 2004 Annual Surveys consist of the Current Industrial Reports surveys, the Annual Survey of Manufactures, the Survey of Industrial Research and Development, and the Survey of Plant Capacity Utilization. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

ADDRESSES: The Census Bureau will provide copies of each form upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: William G. Bostic, Jr., Chief, Manufacturing and Construction Division, on (301) 763–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, Sections 61, 81, 182, 193, 224, and 225. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for the year 2007. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of surveys:

	Survey title
MA313F	Yarn Production.
MA313K	Knit Fabric Production.
MA314Q	Carpets and Rugs.
MA321T	Lumber Production and Mill Stocks.
MA325F	Paint and Allied Products.
MA325G	Pharmaceutical Preparations, except Biologicals.
MA327C	Refractories.
MA327E	Consumer, Scientific, Technical, and Industrial Glassware..
MA331B	Steel Mill Products.
MA332Q	Antifriction Bearings.
MA333A	Farm Machinery and Lawn and Garden Equipment.
MA333D	Construction Machinery.
MA333F	Mining Machinery and Mineral Processing Equipment.
MA333M	Refrigeration, Air-conditioning, and Warm Air Equipment.
MA333P	Pumps and Compressors.
MA334B	Selected Instruments and Related Products.
MA334M	Consumer Electronics.
MA334P	Communication Equipment.
MA334Q	Semiconductors, Printed Circuit Boards, and Electronic Components.
MA334R	Computers and Office and Accounting Machines.
MA334S	Electromedical and Irradiation Equipment.
MA335A	Switchgear, Switchboard Apparatus, Relays, and Industrial Controls.
MA335E	Electric Housewares and Fans.
MA335F	Major Household Appliances.
MA335J	Insulated Wire and Cable.
MA335K	Wiring Devices and Supplies.

The following list of surveys represent annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports (listed below) will be identical with that of the monthly and quarterly reports:

	Survey title
M311H	Animal and Vegetable Fats and Oils (Stocks).
M311J	Oilseeds, Beans, and Nuts (Primary Producers).
M311L	Fats and Oils (Renderers).
M311M	Animal and Vegetable Fats and Oils (Consumption and Stocks).
M311N	Animal and Vegetable Fats and Oils (Production, Consumption, and Stock).
M313P	Consumption on the Cotton System.
M313N	Cotton and Raw Linters in Public Storage.
M327G	Glass Containers.
M336G	Civil Aircraft and Aircraft Engines.
MQ311A	Flour Milling Products.
MQ313T	Broadwoven Fabrics (Gray).
MQ314X	Bed and Bath Furnishings.
MQ315A	Apparel.
MQ325A	Inorganic Chemicals.
MQ325B	Fertilizer Materials.
MQ325C	Industrial Gases.
MQ327D	Clay Construction Products.
MQ333W	Metalworking Machinery.
MQ335C	Fluorescent Lamp Ballasts.

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census

Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF publishes the results in its publication series. Five data items in the survey provide interim statistics collected in the Census Bureau's economic censuses. These items (total company sales, total employment, total expenditures for research and development conducted within the company, federally-funded expenditures for research and development conducted within the company, and total expenditures and federally-funded expenditures for research and development within the company by state) are collected on a mandatory basis under the authority of Title 13, United States Code. Responses to all other data collected are voluntary.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 45, the OMB approved the 2003 Annual Surveys under the following OMB control numbers: Current Industrial Reports—0607–0392, 0607–0395, and 0607–0476; Annual Survey of Manufactures—0607–0449; Survey of Industrial Research and Development—3145–0027; and Survey of Plant Capacity Utilization—0607–0175. We will provide copies of each form upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: January 21, 2005.

Charles Louis Kincannon,

Director, U.S. Census Bureau.

[FR Doc. 05–1403 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–2005]

Foreign-Trade Zone 40—Cleveland, OH, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 19, 2005.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97); June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); April 2002 (Board Order 1224, 67 FR 20087, 4/15/02); August 2003 (Board Order 1289, 68 FR 52384, 9/3/03; Board Order 1290, 68 FR 52384, 9/3/03; and, Board Order 1295, 68 FR 52383, 9/3/03); March 2004 (Board Order 1320, 69 FR 13283, 3/22/04 and Board Order 1322, 69 FR 17642, 4/5/04); and, September 2004 (Board Order 1351, 69 FR 56038, 9/17/04).

The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* consists of 1,339 acres in Cleveland, which includes the Port of Cleveland complex (Site 1A–94 acres), the Cleveland Bulk Terminal (Site 1B–45 acres), and the Tow Path Valley Business Park (Site 1C–1,200 acres); *Site 2* (175 acres)—the IX Center in Brook Park, adjacent to Cleveland Hopkins International Airport; *Site 3* consists of 2,263 acres, which includes the Cleveland Hopkins International Airport Complex (Site 3A–1,727 acres), the Snow Road Industrial Park in Brook Park (Site 3B–42 acres), and the Brook Park Road Industrial Park (Site 3C–322 acres) in Brook Park, and the Cleveland Business Park (Site 3D–172 acres) in Cleveland; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (17 acres)—within the Collinwood Industrial Park, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* consists of 193 acres in Strongsville, which includes the Strongsville Industrial Park (Site 7A–174 acres) and the Progress Drive Business Park (Site 7B–19 acres); *Site 8* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; *Site 9* (4 acres)—within the Frane Properties Industrial Park, 2399 Forman Road, Morgan Township; *Site 10* (60 acres)—within the Solon Business Park, Solon; *Site 11* (170 acres, 2 parcels)—within the 800-acre Harbour Point Business Park, Baumhart Road, at the intersections of U.S. Route 6 and Ohio Route 2, Vermilion; and, *Temporary Site* (11 acres)—3 warehouse locations: 29500 Solon Road (250,000 sq. ft.), 30400 Solon Road (110,000 sq. ft.), and 31400 Aurora Road (117,375 sq. ft.) located within the Solon Business Park in Solon (expires 4/1/05). Several applications are currently pending with the Board to expand FTZ 40: Dockets 19–04, 20–04, 25–04 and 59–04.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site in the area: *Proposed Site 14* (448 acres)—Taylor Woods Commerce Park bounded by Cleveland Street to the north, Taylor Parkway to the south, Race Road to the east and State Route 57 to the west located in the Cities of Elyria and North Ridgeville (Lorain County). The proposed expansion site will be used for general warehousing and distribution activities. (A pending application to reorganize FTZ 40 (Docket 20–2004) proposes to consolidate and renumber the FTZ sites, and under this plan the Taylor Woods Commerce Park would become proposed Site 12.)

No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is March 28, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 11, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–1447 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Vladimir Alexanyan; In the Matter of: Vladimir Alexanyan, 934 Mercedes Avenue, Los Altos, CA 94022, Respondent; Order Relating to Vladimir Alexanyan

The Bureau of Industry and Security, United States Department of Commerce (''BIS'') has notified Vladimir Alexanyan (''Alexanyan'') of its intention to initiate an administrative proceeding against Alexanyan pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2004)) (''Regulations''),[1] and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''Act''),[2] by issuing a proposed charging letter to Alexanyan that alleged that Alexanyan, as President of Valtex International Corporation (''Valtex''), in his individual capacity, committed eight violations of the Regulations. Specifically, the charges are:

1. 15 CFR 764.2(c)—Attempted Export of Germanium Coated Polymide Film to the People's Republic of China Without the Required Department of Commerce License: On or about October 28, 2002, Alexanyan attempted to violate the Regulations by attempting to export Germanium coated polymide film (''film''), an item subject to the Regulations (ECCN 1A003),[3] from the United States to the People's Republic of China without obtaining the Department of Commerce license required by Section 742.4 of the Regulations.

2. 15 CFR 764.2(e)—Buying an Item With Knowledge a Violation of the Regulations Would Occur: On or about September 12, 2002, Alexanyan bought the film referenced in Paragraph One with knowledge that a violation of the Regulations would occur. Specifically, Alexanyan bought the film from a U.S. manufacturer when Alexanyan knew that he would attempt to export the film to the People's Republic of China without obtaining the required Department of Commerce license.

3. 15 CFR 764.2(c)—Attempted False Statement on a Shipper's Export Declaration Concerning Authority to Export: On or about October 28, 200, in connection with the attempted export referenced in Paragraph One, Alexanyan attempted a violation of the Regulations by attempting to file or cause to be filed a Shipper's Export Declaration with the United States Government that stated the film qualified for export from the United States as G–DEST.[4] This statement was false because, as described in Paragraph One, a Department of Commerce license was required to export this item to the People's Republic of China.

4. 15 CFR 764.2(e)—Knowingly Attempting to Make a False Statement on a Shipper's Export Declaration: On or about October 28, 2002, in connection with the transaction referenced in Paragraph One, Alexanyan engaged in conduct prohibited by the Regulations by attempting to export the film with knowledge that a violation of the Regulations would occur. Specifically, Alexanyan completed a Shipper's Export Declaration and attempted to file it with the United States Government that falsely stated the film qualified for export from the United States as G–DEST. At all times relevant hereto, Alexanyan knew that a Department of Commerce license was required to export the film to the People's Republic of China.

5. 15 CFR 764.2(c)—Attempted False Statement on a Shipper's Export Declaration Concerning Identity of Ultimate Consignee: On or about October 28, 2002, in connection with the attempted export referenced in Paragraph One, Alexanyan attempted to file or cause to be filed a Shipper's Export Declaration with the United States Government that falsely stated the true identity of the ultimate consignee. Specifically, Alexanyan attempted to file a Shipper's Export Declaration that stated the ultimate consignee was the China Great Wall Industry Corporation in the People's Republic of China. This statement was false because the actual ultimate consignee in the transaction was the Chinese Academy of Space and Technology in the People's Republic of China.

6. 15 CFR 764.2(e)—Knowingly Attempting to Make a False Statement on a Shipper's Export Declaration: On or about October 28, 2002, in connection with the attempted export referenced in Paragraph One, Alexanyan engaged in conduct prohibited by the Regulations by attempting to export the film with knowledge that a violation of the Regulations would occur. Specifically, Alexanyan completed a Shipper's Export Declaration and attempted to file it with the United States Government that falsely stated the identity of the ultimate consignee for the transaction as described in Paragraph Five. At all times relevant hereto, Alexanyan knew that the ultimate consignee for the film was the Chinese Academy of Space and Technology, not the China Great Wall Industry Corporation.

7. 15 CFR 764.2(c)—Attempting to File a Shipper's Export Declaration that Failed to Provide Required Information: On or about October 28, 2002, in connection with the attempted export referenced in Paragraph One, Alexanyan attempted to file or cause to be filed a Shipper's Export Declaration with the United States Government that failed to show the ECCN as required by Part 758 of the Regulations.

8. 15 CFR 764.2(g)—False Statement to an Office of Export Enforcement Special Agent in the Course of an Investigation: On or about November 13, 2002, in connection with an ongoing BIS, Office of Export Enforcement (''OEE'') investigation concerning the transaction referenced in Paragraph One, Alexanyan made a false statement to OEE investigators. Specifically, in a

[1] The charged violations occurred in 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 CFR parts 730–774 (2002)). The 2004 Regulations set forth the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 FR 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

[3] The term ''ECCN'' refers to an Export Control Classification Number. See Supp. 1 to 15 CFR 774.

[4] The term ''G–DEST'' was a term used in pre-1997 regulations and was a provision authorizing exports of items that appeared on the Commerce Control List but that did not require a validated license. See 15 CFR 771.3 (1996).

sworn statement to OEE investigators, Alexanyan stated the attempted export of the film to the People's Republic of China without the required U.S. Department of Commerce license was a mistake due to a mis-communication between himself and another employee at Valtex. This statement was false because Alexanyan knew or had reason to know that a license was required from the U.S. Department of Commerce to export the film to the People's Republic of China and that no license had been or would be obtained.

Whereas, BIS and Alexanyan having entered into a Settlement Agreement pursuant to Section766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth herein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered: First, that a civil penalty of $88,000 is assessed against Alexanyan which shall be paid to the U.S. Department of Commerce within 30 days from the date on which Alexanyan enters a plea of guilty to related criminal charges at a Rule 11 hearing in the United States District Court for the District of Minnesota. Payment shall be made by wire transfer as specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Alexanyan will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to Alexanyan. Accordingly, if Alexanyan should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Alexanyan's export privileges for a period of one year from the date of entry of this Order.

Fourth, that for a period of five years from the date of this Order, Vladimir Alexanyan, 934 Mercedes Avenue, Los Altos, California 94022 (''Alexanyan''), his successors or assigns, and, when acting for or on behalf of Alexanyan, his officers, representatives, agents, or employees (''denied person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') that is subject to the Regulations and that is exported or to be exported from the United States to the People's Republic of China, or in any other activity subject to the Regulations that involves the People's Republic of China, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document that involves exports to the People's Republic of China;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to the People's Republic of China, or in any other activity subject to the Regulations that involves the People's Republic of China; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to the People's Republic of China that is subject to the Regulations, or in any other activity subject to the Regulations that involves the People's Republic of China.

Fifth, that no person may, directly or indirectly, do any of the actions described below with respect to an item that is subject to the Regulations and that has been, will be, or is intended to be exported or reexported to the People's Republic of China:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations from the United States to the People's Republic of China;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to the People's Republic of China, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to the People's Republic of China;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to the People's Republic of China; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to the People's Republic of China and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to the People's Republic of China. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Sixth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Alexanyan by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Seventh, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

Eighth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 13th day of January 2005.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–1362 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Valtex International Corporation; In the Matter of Valtex International Corporation, 1000 San Antonio Road, Palo Alto, CA 94303, Respondent; Order Relating to Valtex International Corporation

The Bureau of Industry and Security, United States Department of Commerce (''BIS'') has notified Valtex International Corporation (''Valtex'') of its intention to initiate an administrative proceeding against Valtex pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2004))

(''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''Act''),[2] by issuing a proposed charging letter to Valtex that alleged that Valtex committed seven violations of the Regulations, Specifically, the charges are:

1. 15 CFR 764.2(c)—Attempted Export of Germanium Coated Polymide File to the People's Republic of China Without the Required Department of Commerce License: On or about October 28, 2002, Valtex attempted to violate the Regulations by attempting to export Germanium coated polymide file (''film''), an item subject to the Regulations (ECCN 1A003),[3] from the United States to the People's Republic of China without obtaining the Department of Commerce license required by Section 742.4 of the Regulations.

2. 15 CFR 764.2(e)—Buying an Item With Knowledge a Violation of the Regulations Would Occur: On or about September 12, 2002, Valtex bought the film referenced in Paragraph One with knowledge that a violation of the Regulations would occur. Specifically, Valtex bought the film from a U.S. manufacturer when Valtex knew that it would attempt to export the film to the People's Republic of China without obtaining the required Department of Commerce license.

3. 15 CFR 764.2(c)—Attempted False Statement On a Shipper's Export Declaration Concerning Authority to Export: On or about October 28, 2002, in connection with the attempted export referenced in Paragraph One, Valtex attempted a violation of the Regulations by attempting to file or cause to be filed a Shipper's Export Declaration with the United States Government that stated the film qualified for export from the United States as G–DEST.[4] This statement was false because, as described in Paragraph One, a Department of Commerce license was required to export this item to the People's Republic of China.

4. 15 CFR 764.2(e)—Knowingly Attempting to Make a False Statement on a Shipper's Export Declaration: On or about October 28, 2002, in connection with the transaction referenced in Paragraph One, Valtex engaged in conduct prohibited by the Regulations by attempting to export the film with knowledge that a violation of the Regulations would occur. Specifically, Valtex completed a Shipper's Export Declaration and attempted to file it with the United States Government that falsely stated the film qualified for export from the United States as G–DEST. At all times relevant hereto, Valtex knew that a Department of Commerce license was required to export the film to the People's Republic of China.

5. 15 CFR 764.2(c)—Attempted False Statement on a Shipper's Export Declaration Concerning Identity of Ultimate Consignee: On or about October 28, 2002, in connection with the attempted export referenced in Paragraph One, Valtex attempted to file or cause to be filed a Shipper's Export Declaration with the United States Government that falsely state the true identity of the ultimate consignee. Specifically, Valtex attempted to file a Shipper's Export Declaration that stated the ultimate consignee was the China Great Wall Industry Corporation in the People's Republic of China. This statement was false because the actual ultimate consignee in the transaction was the Chinese Academy of Space and Technology in the People's Republic of China.

6. 15 CFR 764.2(e)—Knowingly Attempting to Make a False Statement on a Shipper's Export Declaration: On or about October 28, 2002, in connection with the attempted export referenced in Paragraph One, Valtex engaged in conduct prohibited by the Regulations by attempting to export the film with knowledge that a violation of the Regulations would occur. Specifically, Valtex completed a Shipper's Export Declaration and attempted to file it with the United States Government that falsely stated the identity of the ultimate consignee for the transaction as described in Paragraph Five. At all times relevant hereto, Valtex knew that the ultimate consignee for the film was the Chinese Academy of Space and Technology, not the China Great Wall Industry Corporation.

7. 15 CFR 764.2(c)—Attempting to File a Shipper's Export Declaration that Failed to Provide Required Information: On or about October 28, 2002, in connection with the attempted export referenced in Paragraph One, Valtex attempted to file or cause to be filed a Shipper's Export Declaration with the United States Government that failed to show the ECCN as required by part 758 of the Regulations.

Whereas, BIS and Valtex having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT is therefore ordered: First, that a civil penalty of $77,000 is assessed against Valtex which shall be paid to the U.S. Department of Commerce within 30 days from the date on which Valtex enters a plea of guilty to related criminal charges at a Rule 11 hearing in the United States District Court for the District of Minnesota. Payment shall be made by wire transfer as specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owned under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Valtex will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to Valtex. Accordingly, if Valtex should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Valtex's export privileges for a period of one year from the date of entry of this Order.

Fourth, Valtex shall implement an Export Management System not later than 12 months from the date of entry of the Order. Said Export Management System shall be in substantial compliance with the Export Managewmnet Systems Guidelines, which are available from the GIS Web site at *http://www.bis.doc.gov/*

[1] The charged violations occurred in 2002. The Regulations governing the violations at issue are found in the 2002 version of the Code of Federal Regulations (15 CFR parts 730–774 (2002)). The 2004 Regulations set forth the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. during that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (59 F.R. 48763 (August 10, 2004)), has continued the Regulations in effect under the IEEPA.

[3] The term ''ECCN'' refers to an Export control Classification Number. *See* Supp. 1 to 15 CFR 774.

[4] The term ''G–DEST'' was a term used in pre-1997 regulations and was a provision authorizing exports of items that appeared on the Commerce Control List but that did not required a validated license. *See* 15 CFR 771.3 (1996).

ExportManagementSystems/EMSGuidelines.html, which are incorporated herein by reference. A copy of said Export Management System shall be transmitted to the Office of Export Enforcement, U.S. Department of Commerce, High Point Plaza, 4415 West Harrison Street, Hillside, Illinois 60162, not later than December 31, 2005.

Fifth, that for a period of five years from the date of this Order, Valtex International Corporation, 1000 San Antonio Road, Palo Alto, California 94303 (''Valtex''), its successors or assigns, and, when acting for or on behalf of Valtex, its officers, representatives, agents, or employees (''denied person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') that is subject to the Regulations and that is exported or to be exported from the United States to the People's Republic of China, or in any other activity subject to the Regulations that involves the People's Republic of China, or in any other activity subject to the Regulations that involves the People's Republic of China, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document that involves exports to the People's Republic of China;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to the People's Republic of China, or in any other activity subject to the Regulations that involves the People's Republic of China; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to the People's Republic of China that is subject to the Regulations, or in any other activity subject to the Regulations that involves the People's Republic of China.

Sixth, that no person may, directly or indirectly, do any of the actions described below with respect to an item that is subject to the Regulations and that has been, will be, or is intended to be exported or reexported to the People's Republic of China:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations from the United States to the People's Republic of China;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to the People's Republic of China, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to the People's Republic of China;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to the People's Republic of China; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to the People's Republic of China and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to the People's Republic of China. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Seventh, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Valtex by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Eighth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

Ninth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 14th day of January 2005.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–1363 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801]

Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 26, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the period May 1, 2003, through April 30, 2004. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 39409 (June 30, 2004). The preliminary results of reviews are currently due no later than January 31, 2005.

Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of these reviews within the original time

limit because additional time is needed to analyze the questionnaire responses and supplemental questionnaire responses submitted by the respondents, to analyze comments on model-match methodology submitted by interested parties, and to conduct verifications of the respondents. Therefore, we are extending the time period for issuing the preliminary results of these reviews by 60 days, until April 1, 2005.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 14, 2005.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–277 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 6, 2004, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico (69 FR 47905). This review covers one manufacturer/exporter, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox), of the subject merchandise to the United States during the period July 1, 2002 to June 30, 2003. Based on our analysis of the comments received, we have made changes in the margin calculation; therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 26, 2005.

FOR FURTHER INFORMATION CONTACT: Angela Strom at (202) 482–2704, Maryanne Burke at (202) 482–5604 or Robert James at (202) 482–0649, AD/CVD Operations, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period July 1, 2002 to June 30, 2003. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47905 (August 6, 2004). In response to the Department's invitation to comment on the preliminary results of this review, Mexinox and Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Organization, Inc. and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners) filed their case briefs on September 7, 2004. Mexinox and petitioners submitted their rebuttal briefs on September 14, 2004. On November 26, 2004, we published in the **Federal Register** our notice of extension of time limit for this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Antidumping Duty Administrative Review; Extension of Time Limit*, 69 FR 68882 (November 26, 2004). This extension notice established the new deadline of January 14, 2005 for the final results of this review.

Period of Review

The period of review (POR) is July 1, 2002 to June 30, 2003.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper

valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated January 14, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly via the Internet at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made the following changes to the margin calculation:

- We have recalculated Mexinox's general and administrative expenses (G&A) ratio and have applied it to Mexinox's reported cost of manufacture (COM).
- We have recalculated the interest expense (INTEX) ratio and have applied

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

it to Mexinox's reported cost of manufacture (COM).

• We have revised the cost of production (COP) by adjusting the interest expense (INTEX) rate of Mexinox's corporate parent, ThyssenKrupp AG, and incorporating it into the major input analysis. This impacts direct material inputs (DIRMAT) used for purposes of calculating the total cost of manufacture (TOTCOM).

• We have accepted the respondent-reported annealing and pickling adjustment used to recalculate TOTCOM.

These changes are discussed in the relevant sections of the Decision Memorandum and the January 14, 2005 ''Analysis of data Submitted by Thyssen Krupp Mexinox S.A. de C.V (Mexinox) for the Final Results of Stainless Steel Sheet and Strip in Coils from Mexico (A–201–822)'' (''Analysis Memorandum'').

Final Results of Review

We determine the following weighted-average percentage margin exists for the period July 1, 2002 to June 30, 2003:

Manufacturer/exporter	Weighted average margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V	5.42

Assessment

The Department shall determine and Customs and Border Protection (Customs) shall assess antidumping duties on all appropriate entries. In accordance with 19 CFR section 351.212(b)(1), we have calculated importer-specific *ad valorem* duty assessment rates. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rate against the entered Customs values for the subject merchandise on each of the importer's entries under the relevant order during the POR. *See* 19 CFR section 351.212(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930 as amended (the Tariff Act): (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 30.85 percent, which is the ''All Others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 30790 (June 8, 1999). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR section 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR section 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: January 14, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

[FR Doc. 05–1391 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–848]

Final Results of Countervailing Duty Expedited Review: Hard Red Spring Wheat From Canada

AGENCY:

Import Administration, International Trade Administration, Department of Commerce.

SUMMARY:

On October 21, 2004, the Department of Commerce published the preliminary results of the expedited review of the countervailing duty order on hard red spring wheat from Canada. The company covered by this review was Richelain Farms. The period of review is August 1, 2001, through July 31, 2002. We gave interested parties an opportunity to comment on those results. None were submitted. Thus, the final results of the expedited review do not differ from the preliminary results, in which we found that countervailable

subsidies are not being provided to Richelain Farms.

Based on these final results, we are excluding Richelain Farms from the countervailing duty order in this proceeding. We will instruct U.S. Customs and Border Protection to refund all collected cash deposits and waive future cash deposit requirements for Richelain Farms, as detailed in the ''Final Results of Expedited Review'' section of this notice.

EFFECTIVE DATE:

January 26, 2005.

FOR FURTHER INFORMATION CONTACT:

Stephen Cho or Daniel Alexy, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3798 and (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Petitioner

The petitioner is the North Dakota Wheat Commission, one of the participating petitioners in the investigation.

Period of Review

The period of review for this expedited review is the same period as the investigation: August 1, 2001, to July 31, 2002, which coincides with the fiscal year of the Canadian Wheat Board (''CWB''). *See* 19 CFR 351.204(b)(2) and 19 CFR 351.214(k)(3)(i).

Background

The preliminary results of this expedited review were published in the **Federal Register** on October 21, 2004. *See Preliminary Results of Countervailing Duty Expedited Review: Hard Red Spring Wheat from Canada*, 69 FR 61799 (''*Preliminary Results*''). In the *Preliminary Results*, we invited parties to comment. The parties neither submitted comments nor requested a hearing.

Scope of Review

The products covered by this order are all varieties of hard red spring wheat (''HRSW'') from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this order is currently classifiable under the following *Harmonized Tariff Schedule of the United States* (''HTSUS'') subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. This order does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat. Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Final Results of Expedited Review

The CWB represents Western Canadian wheat producers who want to sell their wheat in the global wheat market. The CWB enjoys certain powers and rights similar to those of government agencies; for example, under the Canadian Wheat Board Act, the CWB is a single–desk seller of all ''Western Division'' grain. According to the Canada Transportation Act, ''Western Division'' means the part of Canada lying west of the meridian passing through the eastern boundary of the City of Thunder Bay, including the whole of the Province of Manitoba.

In the September 5, 2003, *Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52747, we determined that the CWB benefitted from two countervailable subsidy programs: ''Provision of Government–Owned and Leased Railcars'' and ''Comprehensive Financial Risk Coverage: The Borrowing, Lending, and Initial Payment Guarantees.'' In its questionnaire response, Richelain Farms (''Richelain'') (the respondent in this expedited review), which is located in Quebec, reported that it never benefitted from the subsidy programs found countervailable in the investigation. Furthermore, Richelain reported that it has never purchased or exported CWB wheat, and that it has no business relationship with the CWB.

At verification, the Department of Commerce (''the Department'') did not find any evidence that Richelain received subsidies from the programs found countervailable in the investigation. The Department also found no indication of any relationship between Richelain and the CWB, or that Richelain exported CWB–sourced wheat to the United States. *See* October 8, 2004, memorandum entitled, ''Verification of Richelain Farms in the Countervailing Duty Expedited Review of Hard Red Spring Wheat from Canada,'' which is on file in the Department's Central records Unit in Room B–099 of the main Department building. Accordingly, the Department determines that Richelain has not benefitted from any of the subsidies found countervailable in the investigation.

The calculated individual subsidy rate for Richelain, the only respondent subject to this expedited review, is zero. Accordingly, pursuant to 19 CFR 351.214(k)(3)(iv), we determine that Richelain should be excluded from the countervailing duty order. As a result, we will instruct U.S. Customs and Border Protection (''CBP'') to refund all cash deposits of estimated countervailing duties collected on all shipments of HRSW produced and exported by Richelain. In addition, we will instruct CBP to waive cash deposit requirements of estimated countervailing duties on all shipments of HRSW produced and exported by Richelain, entered, or withdrawn from warehouse, for consumption on or after the date of publication of these results.

The results of this expedited review are published pursuant to sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: January 19, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–303 Filed 1–25–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011905D]

Proposed Information Collection; Comment Request; High Seas Fishing Vessel Reporting Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 28, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW,

Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bob Dickinson, F/SF4, Room 13304, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2276, ext. 154).

SUPPLEMENTARY INFORMATION:

I. Abstract

The operators of vessels licensed under the High Seas Fishing Compliance Act are required to report their catch and fishing effort when fishing on the high seas. The requirement is for fishery management purposes and to provide data to international organizations. Vessels already maintaining logbooks under other specific regulations are not required to maintain an additional logbook.

II. Method of Collection

Paper logbook pages are submitted.

III. Data

OMB Number: 0648–0349.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 550.

Estimated Time Per Response: 5 minutes per day for days fish are caught; and 1 minute per day for days when fish are not caught.

Estimated Total Annual Burden Hours: 850.

Estimated Total Annual Cost to Public: 3,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–1338 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011905C]

Proposed Information Collection; Comment Request; High Seas Fishing Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 28, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bob Dickinson, F/SF4, Room 13304, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2276, ext. 154).

SUPPLEMENTARY INFORMATION:

I. Abstract

The operators of vessels licensed under the High Seas Fishing Compliance Act are required to mark their vessels in 3 locations (port and starboard sides of the deckhouse or hull, and on a weatherdeck) with their official number or radio call sign. The requirement is for enforcement purposes.

II. Method of Collection

No information is submitted, only displayed on the vessel.

III. Data

OMB Number: 0648–0348.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 45 minutes (15 minutes for each of 3 locations).

Estimated Total Annual Burden Hours: 37.

Estimated Total Annual Cost to Public: $1,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–1339 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011805D]

Proposed Information Collection; Comment Request; High Seas Fishing Permit Application Information

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 28, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bob Dickinson, F/SF4, Room 13304, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2276, ext. 154).

SUPPLEMENTARY INFORMATION:

I. Abstract

U.S. vessels that fish on the high seas (waters beyond the U.S. exclusive economic zone) are required to possess a permit issued under the High Seas Fishing Compliance Act. Applicants must submit information to identify their vessels and intended fishing areas. The application information is used to process applications and to maintain a register of vessels authorized to fish on the high seas.

II. Method of Collection

Paper forms must be mailed to NOAA.

III. Data

OMB Number: 0648–0304.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost to Public: $10,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–1341 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011805E]

New England Fishery Management Council; Habitat Oversight Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's Habitat Oversight Committee will meet in February 2005. Recommendations from the Committee will be brought to the full Council for formal consideration and action, if appropriate. Agenda topics can be found in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will held on Wednesday, February 16, 2005, beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360; phone: (508) 747–4900.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; phone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Habitat Oversight Committee (Committee) will continue work on elements of the Essential Fish Habitat (EFH) Omnibus Amendment 2 including, but not limited to: progress on improved gear descriptions; a strategy for the prioritization of habitat protection; the Habitat Evaluation Working Group; Habitat Areas of Particular Concern (HAPC) candidate proposals (received to date); and the evaluation of non-fishing impacts on EFH. The Committee will be updated on the planning for Marine Protected Area (MPA) education and outreach workshop(s) to assist the Council develop its MPA policy. Final preparation of a public comment letter on the Cape Wind Draft Environmental Impact Statement is also on the agenda. Other topics will be discussed at the Committee's discretion.

The Committee will meet jointly with the Habitat Plan Development Team and the Chair and Vice-Chair of the Habitat Advisory Panel in the afternoon to continue work on a strategy for the prioritization of habitat protection.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least five days prior to the meeting dates.

Dated: January 19, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–1340 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011405B]

Endangered Species; File No. 1475

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of permit application addendum.

SUMMARY: The Florida Fish and Wildlife Conservation Commission (FFWCC), Florida Marine Research Institute (Richard E. Matheson, Principal Investigator), 1481 Market Circle, Unit 1, Port Charlotte, FL 33953, has submitted a request to modify their permit application (File No. 1475). The original application requested

authorization to conduct scientific research on smalltooth sawfish (*Pristis pectinata*).

DATES: Written or telefaxed comments must be received on or before February 25, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this modification should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1475.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

A notice of receipt of an application from the FFWCC to conduct scientific research on smalltooth sawfish was published on May 21, 2004 (69 FR 29274). The FFWCC sought authorization to sample and track smalltooth sawfish throughout Florida coastal waters. Annually, up to 200 fish were to be captured via seines, hook and line, and gill nets, measured, weighed, PIT and rototagged, tissue sampled, and the fish subsequently released. Additionally, a subset of 50 fish annually were to also receive acoustic transmitters and a subset of 25 fish annually were to also receive satellite transmitters. The permit has not been issued yet but the FFWCC has amended its application to include an annual take of sea turtles. Specifically, the FFWCC is seeking authorization to capture, measure, and release three loggerhead (*Caretta caretta*), three Kemp's ridley (*Lepidochelys kempii*), three green (*Chelonia mydas*), two hawksbill (*Eretmochelys imbricata*) and two leatherback (*Dermochelys coriacea*) turtles annually.

Dated: January 18, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–1342 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 050118012–5012–01]

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: Pursuant to the Consolidated Appropriations Act, 2005, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP). The PTFP assists, through matching grants, in the planning and construction of public telecommunications facilities in order to: (1) Extend delivery of services to as many citizens as possible by the most cost-effective means, including use of broadcast and non-broadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and controlled by minorities and women; (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

DATES: Applications must be received prior to 6 p.m. eastern standard time (Closing Time), Tuesday, March 1, 2005 (Closing Date). Applications submitted by facsimile or electronic means are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Closing Time, (2) significant weather delays or natural disasters, or (3) delays due to national security issues, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after this deadline.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*).

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*).

SUPPLEMENTARY INFORMATION:

Electronic Access

The full funding opportunity announcement for the PTFP FY 2005 grant cycle is available through *http://www.Grants.gov* or by contacting the PTFP office at the address noted above.

Funding Availability

The Congress has appropriated $19.8 million for FY 2005 PTFP awards. For FY 2004, NTIA awarded $20.8 million in funds to 143 projects, including 74 radio awards, 52 television awards and 17 nonbroadcast awards. The radio awards ranged from $4,900 to $258,026. The television awards ranged from $22,000 to $1,853,701. The nonbroadcast awards ranged from $15,617 to $493,130.

Statutory and Regulatory Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390–393, 397–399(b). The PTFP operates pursuant to rules (1996 Rules) which were published on November 8, 1996 (61 FR 57966). Copies of the 1996 Rules (15 CFR part 2301) are posted on the NTIA Internet site at *http://www.ntia.doc.gov/Rules/currentrules.htm* and NTIA will make printed copies available to applicants upon request.

Supplemental Policies

The following supplemental policies will also be in effect:

(A) Applicants may file emergency applications at any time.

(B) Applicants may file requests for Federal Communications Commission (FCC) authorizations with the FCC after the PTFP Closing Date. Grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant.

(C) PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. PTFP applicants for distance learning projects must notify the state telecommunications agencies in the states in which they are located but are not required to notify every state telecommunications agency in a potential service area.

(D) For digital television conversion projects, NTIA has created two new Subpriorities in the Broadcast Other category and will permit purchase of eligible equipment with local match funds after July 1, 1999.

(E) For digital radio conversion projects, NTIA has created a new Subpriority in the Broadcast Other category.

Catalog of Domestic Federal Assistance: 11.550, Public Telecommunications Facilities Program.

Eligibility

To apply for and receive a PTFP Construction Grant or Planning Grant, an applicant must be: (a) A public or noncommercial educational broadcast station; (b) a noncommercial telecommunications entity; (c) a system of public telecommunications entities; (d) a non-profit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (e) a state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

Evaluation and Selection Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.18 for the Selection Process.

Evaluation Criteria

See 15 CFR 2301.17 for a full description of the Evaluation Criteria. The six evaluation criteria are (1) Applicant Qualifications, (2) Financial Qualifications, (3) Project Objectives, (4) Urgency, (5) Technical Qualifications (construction applicants only) or Planning Qualifications (planning applicants only), and (6) Special Consideration.

Funding Priorities and Selection Factors

See 15 CFR 2301.4 and the supplemental policies above for a description of the PTFP Priorities and 15 CFR 2301.18 for the Selection Factors.

Cost Sharing Requirements

PTFP requires cost sharing. By statute, PTFP cannot fund a construction project for more than 75% of the eligible project costs. NTIA has established a policy of funding most new public broadcasting station activation projects at a 75% federal share, and most other television, radio and nonbroadcast projects at a 50% federal share. NTIA can fund planning applications up to 100% of the eligible project costs, but has established a policy of funding planning applications at a 75% share. Any applicant can request federal funding greater than PTFP's policy, up to the statutory maximum, and provide justification for the request.

Intergovernmental Review

PTFP applications are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the first two pages of the PTFP application form, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The names and addresses of the SPOC offices are listed on the PTFP website and at the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Universal Identifier

All applicants (nonprofit, state, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), is applicable to this solicitation.

Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not obligate the agency to award any specific project or to obligate any available funds.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB control no. 0660–0003.

Executive Order 13132

It has been determined that this notice does not contain policies with federalism implications as that term is defined in E.O. 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

William Cooperman,

Director, Public Broadcasting Division.

[FR Doc. 05–1406 Filed 1–25–05; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0013, Exemptions From Speculative Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on exemptions from speculative limits.

DATES: Comments must be submitted on or before March 28, 2005.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, (202) 418–5209; FAX: (202) 418–5527; e-mail: *gmartinaitis@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or ether technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Exemptions From Speculative Limits, OMB Control Number 3038–0013—Extension

Section 4a(a) of the Commodity Exchange Act (Act) allows the Commission to set speculative limits in any commodity for future delivery in order to prevent excessive speculation. Certain sections of the act and/or the Commission's Regulations allow exemptions from the speculative limits for persons using the market for hedging and, under certain circumstances, for commodity pool operators and similar traders. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Regulations (17 CFR)	Estimated number of respondents	Reports annually by each respondent	Total annual responses	Estimated number of hours per response	Annual burden
Rule 1.47 and 1.48	7	2	14	3	42
Part 150	2	1	2	3	6

There are not capital costs or operating and maintenance costs associated with this collection.

Dated: January 19, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–1386 Filed 1–25–05; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the additional names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: January 13, 2005.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. BG Merdith Temple, Commanding General, North Atlantic Division.
2. BG William T. Grisoli, Commanding General, Northwestern Division.
3. BG Robert Crear, Commanding General, Mississippi Valley Division.
4. BG Joseph Schroedel, Commanding General, South Pacific Division.
5. Mr. Fred Caver, Deputy Director of Civil Works, Directorate of Civil Works (HQ).
6. Ms. Patricia Rivers, Chief Environmental Division, Directorate of Military Programs (HQ).
7. Mr. Wilbert Berrios, Director of Corporate Information, Directorate of Corporate Information (HQ).

8. Mr. Mohan Singh, Regional Business Director, North Atlantic Division.

Brenda S. Bowen,

Army Federal Register Liaison Office.

[FR Doc. 05–1383 Filed 1–25–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Arlington Wind Interconnection Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms to interconnect up to 200 megawatts of wind generation from the Columbia Energy Partners' proposed Arlington Wind Project into the Federal Columbia River Transmission System. The wind project will be interconnected at the proposed BPA Jones Canyon Switching Station. BPA's McNary-Santiam #2 230-kilovolt transmission line will be looped through Jones Canyon Switching Station for the purpose of providing transmission access to the wind project. These proposed facilities will be located in Gilliam County, Oregon, about 3 miles southwest of Arlington, Oregon. The decision to offer terms to interconnect the Arlington Wind Project is consistent with and tiered to BPA's Business Plan Final Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 1995).

ADDRESSES: Copies of this ROD and the Business Plan EIS and ROD may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The RODs and EIS are also available on our Web site, *http://www.efw.bpa.gov.*

FOR FURTHER INFORMATION, CONTACT: Donald L. Rose, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free number 1–800–282–3713; fax number 503–230–5699; or e-mail *dlrose@bpa.gov.*

Issued in Portland, Oregon, on January 14, 2005.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 05–1387 Filed 1–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

January 14, 2005.

Take notice that the following applications have been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project Nos.:* 2210–110 and 2210–111.

c. *Date Filed:* January 6, 2005.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, PO Box 2021, Roanoke, VA 24022–2121, (540) 985–2441.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* February 14, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–110 for the Pitstop Marina and P–2210–111 for Sanctuary Bay) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission(s Web site at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting approval for the following non-project uses of project lands:

P–2210–110—Pitstop Marina and Grill, L.L.C. proposes to modify and expand an existing marina known as Pitstop Marina by reconfiguring the dock lay-out and adding 45 slips to the marina. These facilities would be located on Leesville Lake.

P–2210–111—Plyler Properties, Inc. proposes to construct thirteen community docks with a total of eighty-seven slips to serve multi-family type dwellings. These facilities would serve the SanctuaryBay development along Smith Mountain Lake.

l. Location of the Application: This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–290 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–46–000, CP05–47–000 and CP05–48–000]

Central Kentucky Transmission Company; Notice of Application

January 14, 2005.

Take notice that Central Kentucky Transmission Company (Central Kentucky), 2001 Mercer Road, Lexington, Kentucky 40512, filed in Docket No. CP05–46–000 on January 7, 2005, an application pursuant to section 7 of the Natural Gas Act (NGA) and the Commission's Regulations, for authorization to acquire an undivided interest in certain natural gas facilities, located in Madison and Fayette Counties, Kentucky, which are currently owned by Columbia Gas Transmission Corporation. Specifically the facilities consist of approximately 28.6 miles of primarily 12-inch pipeline, three measuring and/or regulating stations, and nine mainline taps, together with rights of way and appurtenances. Central Kentucky further requests in Docket Nos. CP05–47–000 and CP05–48–000 blanket certificate authorization under Part 157 Subparts G and F of the Commission's regulations allowing Central Kentucky to engage in future activities permitted under blanket regulations and to provide transportation of natural gas in interstate commerce, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to counsel for Central Kentucky, Frederic J. George, Senior Attorney, NiSource Corporate Services Company, PO Box 1273, Charleston, West Virginia 25325–1273; telephone (304) 357–2359 or fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 4, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–285 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–50–000]

Colorado Interstate Gas Company; Notice of Application

January 18, 2005.

Take notice that on January 12, 2005, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations for an order granting a certificate of public convenience to construct and operate looping pipeline, compression facilities and appurtenances located in Oklahoma, Kansas and Colorado, as part of its Raton Basin 2005 Expansion Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Specifically, CIG proposes to construct, and operate approximately 64.4 miles of 16-inch diameter pipeline, approximately 6.7 miles of 20-inch diameter pipeline and approximately 31 miles of 24-inch diameter pipeline in Las Animas and Baca Counties, Colorado, Morton County, Kansas and Texas County, Oklahoma. Additionally, CIG proposes to recylinder two compressor units at its Kim Compressor Station in Las Animas County, Colorado and install an additional 1,770 HP compressor unit at its Beaver County Compressor Station in Beaver County, Oklahoma. Finally, CIG proposes certain appurtenances all necessary to handle the increased volumes anticipated out of the Raton Basin. Total costs are estimated to be approximately $60.6 million.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534 or Craig V. Richardson, Vice President and General Counsel, Colorado Interstate Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–4929 or by fax at (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: March 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–299 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–44–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

January 18, 2005.

Take notice that on January 5, 2005, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Houston, Texas 77057–5637, filed in Docket No. CP05–44–000, an application pursuant to pursuant to Sections 157.205, 157.208, and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, Federal Energy Regulatory Commission (Commission), for authorization to replace 9.39 miles of its 30- and 36-inch pipeline designated as Mainlines 100, 200, and 300, located in Williamson and Davidson counties, Tennessee, due to a Department of Transportation (DOT) class location change of the pipeline. Columbia Gulf states that as a result of recent population density surveys required by DOT, it has determined that in order to maintain the current maximum operating pressure of the pipeline, the existing pipeline must be replaced by a heavier walled pipeline. Columbia Gulf also seeks approval to abandon by removal an equivalent length of existing like sized transmission pipeline and appurtenances of its Mainlines 100, 200, and 300, which is being replaced. The pipeline will be replaced with an approximate like amount and a like size pipeline. The construction is proposed to take place within an existing right-of-way, is estimated to cost $15.6-million, and will involve a typical lift and lay procedure, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions concerning this application may be directed to counsel for Columbia Gulf, Frederic J. George, Senior Attorney, Columbia Gas Transmission Corporation, PO Box 1273, Charleston West Virginia 25325–1273; telephone 304–357–2359, fax 304–357–3206.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: March 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–302 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–54–000]

La Paloma Generating Company, LLC, Complainant v. California Independent System Operator Corporation, Respondent; Notice of Complaint Fast Track

January 13, 2005.

Take notice that on January 11, 2005, La Paloma Generating Company, LLC (La Paloma) filed a complaint against the California Independent System Operator Corporation (CAISO) pursuant to section 206 of the Federal Power Act,

16 U.S.C. 824e (1994), and 18 CFR 206 (2004) alleging that the CAISO's refusal to return cash collateral to La Paloma is unjust, unreasonable and unduly discriminatory, and that CAISO should be required to immediately refund the collateral to La Paloma.

La Paloma states that copies of the complaint were served on the contacts for the CAISO and NEGT Energy Trading-Power, L.P. as listed on the Commission's list of corporate officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 2, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–288 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–151–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 14, 2005.

Take notice that on January 11, 2005, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective February 10, 2005:

Fourth Revised Sheet No. 92
Fifth Revised Sheet No. 95
Seventh Revised Sheet No. 96
Fifth Revised Sheet No. 104
Third Revised Sheet No. 105
Second Revised Sheet No. 132G

Viking states that it is filing a tariff sheet to revise Article 10.1 of the form of the firm transportation agreement (Agreement) contained in its tariff to provide a limited fill-in-the-blank provision regarding the prior written notice period for terminating the Agreement. Viking further states that it is proposing to make ministerial changes to its form of Agreement, Interruptible Transportation Agreement, and Master Electronic Transaction Agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–294 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–41–000]

Xcel Energy Services, Inc. and Southwest Power Pool, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

January 14, 2005.

On December 17, 2004, the Commission issued an order instituting a proceeding in Docket No. EL05–41–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL05–41–000, established pursuant to section 206(b) of the Federal Power Act will be May 20, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–287 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

January 14, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to remove project lands from the project boundary.

b. *Project No:* 349–094.

c. *Date Filed:* December 9, 2004.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* The project is located on the Tallapoosa River in Elmore, Coosa, and Tallapoosa Counties, Alabama. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* R. M. Akridge, General Manager—Hydro, Alabama Power Company, 600 North 18th Street, PO Box 2641, Birmingham, Alabama 35291–8180, 205–257–1000.

i. *FERC Contact:* Any questions on this notice should be addressed to Patricia W. Gillis at (202) 502–8735, or e-mail address: *patricia.gillis@ferc.gov.*

j. Deadline for filing comments and or motions: February 14, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–349–094) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Alabama Power Company (Licensee) is seeking Commission authorization to remove from the project a narrow strip of land around Harbor Pointe Marina, an existing commercial marina, and adding to the project an undeveloped parcel in the same general area. The strip of project land proposed for removal from the project is designated for Commercial Recreation uses. The property proposed for addition to the project would be designated as natural undeveloped land. The Licensee believes the proposed change of the project boundary will enhance the environmental, scenic and aesthetic qualities of the Martin Dam Project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–291 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–1102–003, ER03–1102–004, and EL05–14–000]

California Independent System Operator Corporation; Notice Inviting Comments

January 13, 2005.

On January 12, 2005, Commission Staff held a technical conference on the California Independent System Operator Corporation's proposed ''self-certification'' process and alternate proposals. All interested persons are invited to file written comments no later than February 4, 2005, and reply comments no later than February 18, 2005 in relation to the issues that were the subject of the technical conference.

Filing Requirements for Paper and Electronic Filings

Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. The Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov*, click on ''e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Do not submit comments to this e-mail address.

For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to the above-referenced docket number.

All written comments will be placed in the Commission's public files and will be available for inspection at the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

Magalie R. Salas,

Secretary.

[FR Doc. E5–289 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–56–000]

Connecticut Department of Public Utility Control, Complainant v. ISO New England and New England Power Pool, Respondent; Notice of Complaint

January 18, 2005.

Take notice that on January 14, 2005, Connecticut Department of Public Utility Control (CT DPUC), submitted a petition to the Commission for an order directing the New England Power Pool (NEPOOL) and ISO New England (ISO–NE) to amend the currently effective NEPOOL Open Access transmission Tariff (OATT) and the superseding OATT of the Regional Transmission Organization for New England (RTO–NE), approved by the Commission in *ISO New England, Inc.*, 106 FERC ¶ 61,280 (2004). CT DPUC states that under the NEPOOL and RTO–NE OATT formula rates, certain local customers unjustly and unreasonably pay in advance for Pool Transmission Facilities (PTF) capital additions. CT DPUC further states that the PTF additions—as much as $3 billion in New England over the next five years—are necessary to realize regional, system-wide reliability and economic benefits, and the Commission has ordered such costs to be regionalized across New England. CT DPUC explains that the current NEPOOL tariff and the superceding RTO–NE tariff require some local customers to pay these regional costs up front to the extent they are not recovered in the regional OATT, with no reimbursement until the following year.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–301 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–55–000]

City of Holland, MI, Complainant v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint

January 18, 2005.

Take notice that on January 14, 2005, the City of Holland, Michigan (Holland) filed a complaint, pursuant to Rule 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206(2004) against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) seeking a refund of all amounts charged to Holland in excess of the rate for service set forth in section 22 of the Midwest ISO's open access transmission tariff.

Holland states that a copy of the filing was served upon counsel for the Midwest ISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–300 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–123 and EL00–98–110]

San Diego Gas & Electric Company, Complainants v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Compliance Filing

January 14, 2005.

On December 8, 2004, the California Power Exchange Corporation (CalPX) made a compliance filing in response to the Commission's order issued November 23, 2004, in the above-docketed proceedings. CalPX's submitted proposals to aid the Commission in the selection of a methodology to allocate any interest shortfall in the CalPX Settlement Clearing Account among individual buyers and sellers.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on January 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–286 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–57–000]

Williams Power Company, Inc., Complainant v. California Independent System Operator Corp., Respondent; Notice of Complaint

January 18, 2005.

Take notice that on January 14, 2005, Williams Power Company, Inc. (Williams) filed a complaint under section 206 of the Federal Power Act 16 U.S.C. 824e and section 206 of the Commission's Rules of Practice and Procedures 18 CFR 385.206, against the California Independent System Operator Corporation (CAISO). Williams charges that the CAISO has improperly and unlawfully applied an unapproved tolerance band procedure to deprive minimum load cost compensation (MLCC) to generating units operating under the must-offer obligation when returning from a CAISO dispatch instruction. Williams requests a determination that the CAISO's unilateral application of this procedure has not been authorized by the Commission and is therefore unlawful. Williams requests that the Commission direct the CAISO to reverse the application of this procedure in each and every instance that it applied the procedure, and that the Commission direct the CAISO to immediately pay MLCC, plus interest, in which the CAISO imparoperly denied MLCC by virtue of the application in this procedure.

Williams states that this complaint has been served on the CAISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–298 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC05–25–000, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Filings

January 12, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wisconsin Electric Power Company

[Docket No. AC05–25–000]

Take notice that on January 7, 2005, Wisconsin Electric Power Company (Wisconsin Electric) submitted a request a waiver of compliance in reporting in the FERC Form 1 as it pertains to the allowance for funds used during construction and electric plant instruction No. 3(17). Wisconsin Electric states that it does not own any transmission facilities.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

2. Old Dominion Electric Cooperative, New Dominion Energy Cooperative, New Dominion Energy Cooperative, New Dominion Energy Cooperative

[Docket Nos. EC05–1–001, ER05–18–001, ER05–20–001]

Take notice that on January 7, 2005, Old Dominion Electric Cooperative (Old Dominion) and New Dominion Energy Cooperative (New Dominion) joined in filing an amendment to the above referenced dockets in response to the December 8, 2004, deficiency letter, issued by the Commission in these dockets.

Old Dominion stated that a copy of this filing was served upon each of its member cooperatives, the public service commissions in the Commonwealth of Virginia and the states of Delaware, Maryland and West Virginia, and Bear Island Paper Company, LLC.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

3. American Transmission Company LLC

[Docket No. EC05–34–000]

Take notice that on January 6, 2005, American Transmission Company LLC (ATCLLC) tendered for filing an

Application for Authority to Acquire Jurisdictional Facilities under section 203 of the Federal Power Act. ATCLLC requests that the Commission authorize ATCLLC to acquire ownership of certain facilities from Consolidated Water Power Company, Wisconsin.

Comment Date: 5 p.m. Eastern Time on January 27, 2005.

4. Xcel Energy Services Inc.

[Docket No. EC05–35–000]

Take notice that on January 7, 2005, Xcel Energy Services Inc. (XES) tendered for filing on behalf of Northern States Power Company (NSP) an application under section 203 of the Federal Power Act, requesting authorization from the Commission for the sale of a used 187 MVA, 230/115 kV autotransformer presently held as a spare part at NSP's Black Dog generating plant. XES explains that the sale would be made to NSP's utility affiliate Southwestern Public Service Company, another public utility subject to Commission jurisdiction.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

5. Diablo Winds, LLC

[Docket No. EG05–28–000]

Take notice that on January 4, 2005, Diablo Winds, LLC (Diablo Winds), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Diablo Winds states it will own 31 Vestas-V47 turbines with a nameplate capacity of .66 MW each, however, due to site conditions the nameplate capacity has been downgraded to .58 MW each.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

6. FPL Energy Cowboy Wind, LLC

[Docket No. EG05–29–000]

Take notice that on January 7, 2005, FPL Energy Cowboy Wind, LLC (FPLE Cowboy Wind), filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

FPLE Cowboy Wind states it is a wind-powered facility located near Weatherford, Oklahoma. FPLE Cowboy Wind further states that the facility has a nameplate capacity of 106.5 MW. FPLE Cowboy Wind explains that it will own a 34.5 kV collector system associated with the windfarm string buses and the transmission-related facilities from the collector system to the high side of a new substation, where the energy will be delivered. The interconnecting facilities beginning at the delivery point will be owned and operated by Public Service Company of Oklahoma.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

7. Colorado River Commission v. Nevada Power Company

[Docket No. EL04–100–001]

Take notice that on January 6, 2005, Nevada Power Company submitted a compliance filing pursuant to the Commission's November 19, 2004 order in Docket No. EL04–100–000, requiring a time value refund to the Colorado River Commission.

Comment Date: 5 p.m. Eastern Time on February 7, 2005.

8. AEP Power Marketing, Inc.; AEP Service Corporation; CSW Power Marketing, Inc.; CSW Energy Services, Inc.; Central and South West Services, Inc.

[Docket Nos. ER96–2495–024, ER97–4143–012, ER97–1238–019, ER98–2075–018, ER98–542–014]

Take notice that on January 3, 2005, American Electric Power Service Corporation, on behalf of AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc. (collectively, AEP) submitted revised market tariffs in compliance with the Commission's order issued on December 17, 2004 in Docket Nos. ER96–2495–020, *et al.*, 109 FERC ¶ 61,276 (2004).

AEP states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on January 24, 2005.

9. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–762–006]

Take notice that on January 4, Alliant Energy Corporate Services, Inc., (Alliant Energy) filed with the Commission (FERC) an amendment to its market-based rate wholesale power sales Tariff No. 2 (MR–2 Tariff) to prohibit sales under the MR–2 Tariff between Alliant Energy and any affiliate except pursuant to a separate filing under section 205 of the Federal Power Act. Alliant Energy states that this filing is made in compliance with the Commission's Order in Alliant Energy Corporate Services, Inc., 109 2005 FERC ¶ 61,289 (2004).

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

10. Pacific Gas & Electric Company

[Docket Nos. ER04–688–002, ER04–689–003, ER04–690–002, ER04–693–002 (not consolidated)]

Take notice that on January 3, 2005, Pacific Gas & Electric Company, PG&E submitted for filing an Errata correcting minor errors in certain tables that are part of PG& E's service agreement for wholesale distribution service to Western Area Power Administration, in compliance with the Commission's Order issued December 3, 2004 in Docket Nos. ER04–688–001, *et al.*

Comment Date: 5 p.m. Eastern Time on January 24, 2005.

11. American Electric Power Service Corporation

[Docket Nos. ER04–1003–003, ER04–1007–003]

Take notice that on January 4, 2005, American Electric Power Service Corporation (AEPSC) on behalf of the AEP operating companies in its East Zone, (namely Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company) supplemented its December 2, 2004 compliance filing in order to provide additional information concerning the Interconnection and Local Delivery Service Agreement attached as Exhbit T to that filing.

AEPSC states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

12. Sirius Investment Management, Inc.

[Docket No. ER05–71–002]

Take notice that on January 3, 2005, Sirius Investment Management, Inc. (Sirius) submitted an amended petition for acceptance of initial rate schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Sirius states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Sirius also states that it is not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. Eastern Time on January 24, 2005.

13. PJM Interconnection, L.L.C.

[Docket No. ER05–85–002]

Take notice that on January 4, 2005, PJM Interconnection, L.L.C. (PJM),

submitted corrections to the tariff revisions previously filed and accepted in this proceeding for the integration of Duquesne Light Company (Duquesne) into PJM, to remove references to Virginia Electric and Power Company (Dominion). PJM states that these corrections are needed because Dominion's integration into PJM, which the previously filed sheets assumed would occur prior to Duquesne's integration, has been delayed. PJM also states that the corrected tariff sheets reflect an effective date of January 1, 2005, consistent with the effective date established by the Commission's December 20, 2004 order in this proceeding, 109 FERC ¶ 61,299 (2004).

PJM states that copies of this filing were served upon all persons on the service list in this docket, as well as all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

14. Upper Peninsula Power Company

[Docket No. ER05–89–001]

Take notice that on January 4, 2005, Upper Peninsula Power Company (UPPCO) filed a market-based rate tariff (MBR Tariff) for sales into energy markets of the Midwest Independent Transmission System Operator, Inc. (MISO) and the PJM Interconnection, L.L.C. (PJM). UPPCO states that, the MBR Tariff replaces the tariff which UPPCO tendered on October 28, 2004 and which provided for bidding into those energy markets based on UPPCO's embedded costs. UPPCO requests that the Commission waive the sixty-day notice requirement and that the Commission allow the MBR Tariff to become effective on March 1, 2005. UPPCO states that it has also renewed its request that its previously tendered Rate Schedule FERC No. 53 regarding sales by UPPCO into PJM from May 13, 2004 through July 23, 2004 be allowed to become effective in that period.

UPPCO states that copies of the filing were served upon the official service list in this proceeding, PJM, MISO and the Michigan Public Service Commission.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

15. Mirant Delta, LLC; Mirant Potrero, LLC

[Docket No. ER05–343–001]

Take notice that, on January 7, 2005, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (collectively, Mirant) submitted an amendment to an earlier rate filing made on December 16, 2004 in Docket No. ER05–343–000.

Comment Date: 5 p.m. Eastern Time on January 18, 2005.

16. Southern California Edison Company

[Docket No. ER05–417–000]

Take notice, that on January 4, 2005, Southern California Edison Company (SCE) tendered for filing an interconnection facilities agreement (Agreement), Service Agreement No. 36 under SCE's Transmission Owner Tariff (TOT) FERC Electric Tariff, Second Revised Original Volume No. 6, between SCE and the PPM Energy, Inc. SCE requests an effective date of January 4, 2005.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

17. Telemagine, Inc.

[Docket No. ER05–419–000]

Take notice that on January 4, 2005, Telemagine, Inc. (Seller) petitioned the Commission for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under subparts B and C of part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

18. American Electric Power Service Corporation

[Docket No. ER05–420–000]

Take notice that on January 4, 2005, American Electric Power Service Corporation, (AEPSC) submitted for filing as Original Service Agreement No. 619 under FERC Electric Tariff, Third Revised Volume No. 6, an executed Letter Agreement between Appalachian Power Company and Bristol Virginia Utilities. AEP requests an effective date of November 11, 2004.

AEPSC states that a copy of this filing have been served upon the Virginia State Corporation Commission.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

19. Encogen Northwest, L.P.

[Docket No. ER05–421–000]

Take notice that on January 4, 2005, Encogen Northwest, L.P. (Encogen) filed with the Commission, pursuant to section 205 of the Federal Power Act, a tariff relating to the arrangement between Encogen and Puget Sound Energy, Inc. (Puget) concerning the provision of capacity and energy to Puget from a 170 MW cogeneration facility owned by Encogen. Encogen requests for waiver of the prior notice requirements.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–296 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–105–001, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

January 14, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket Nos. EL04–105–001, ER04–742–003]

Take notice that on January 7, 2005, PJM Interconnection, L.L.C. (PJM), submitted in compliance with the Commission's May 28, 2004 Order in this proceeding, 107 FERC ¶61, 223, revisions to the PJM open access transmission tariff and an amended and restated operating agreement of PJM concerning rules for allocating auction revenue rights and financial transmission rights on the PJM system. PJM requests that the submitted revisions become effective on March 8, 2005.

PJM states that copies of this filing were served upon all persons on the service list, as well as all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

2. Rainbow Energy Marketing Corporation

[Docket No. ER94–1061–026]

Take notice that on January 7, 2005, Rainbow Energy Marketing Corporation (Rainbow) tendered for filing a limited amendment to its December 15, 2004 filing, amending its FERC Electric Tariff, Original Volume No. 1. Among other things, the amendment would allow Rainbow to: (1) Sell ancillary services at wholesale at market-based rates; (2) reassign transmission capacity in accordance with the conditions established by the Commission; and (3) unilaterally modify the tariff.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

3. Mirant California, LLC; Mirant Delta, LLC; Mirant Potrero, LLC; Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC; Mirant Peaker, LLC; Mirant Potomac River, LLC; Mirant Zeeland, LLC

[Docket Nos. ER01–1267–004, ER01–1270–004, ER01–1278–003, ER01–1269–003, ER01–1273–003, ER01–1276–003, ER01–1277–003, ER01–1263–003]

Take notice that on January 4, 2005, the above-referenced entities, collectively the ''Mirant Entities'' amended their compliance filing submitted on November 9, 2004, to include Attachment H, market behavior rules for Mirant Zeeland, LLC. The Mirant Entities states that Attachment H was inadvertently omitted from their compliance filing.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

4. Southern California Edison Company

[Docket No. ER04–435–007]

Take notice that, on January 5, 2005, Southern California Edison Company (SCE) submitted a revised compliance filing pursuant to the Commission's Order 2003, Standardization of Generator Interconnection Agreements and Procedures, issued August 19, 2003 in Docket No. RM02–1–000.

SCE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on January 26, 2005.

5. San Diego Gas & Electric Company

[Docket No. ER04–441–005]

Take notice that on January 5, 2005, San Diego Gas & Electric Company (SDG&E) tendered for filing its transmission owner tariff (TO Tariff), FERC Electric Tariff, Original Volume No. 11 and the first revised rate sheets for its TO Tariff. SDG&E requests the Commission to set an effective date for the revised TO sheets on the date on which the Commission accepts the California ISO's, Pacific Gas & Electric Company's, SDG&E's, and Southern California Edison Company's Order 2003 and Order 2003–A compliance filings. Alternatively SDG&E seeks an effective date for the date on which the Commission accepts the instant filings.

SDG&E states that copies of this filing were served upon the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on January 26, 2005.

6. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company

[Docket Nos. ER04–435–008, ER04–441–004, ER04–443–004]

Take notice that on January 5, 2005, California Independent System Operator Corporation (ISO), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) (collectively the Filing Parties) pursuant to section 205 of the Federal Power Act jointly submitted for filing a Standard Large Generator Interconnection Agreement in compliance with Order Nos. 2003 and 2003–A, and the Commission's July 30, 2004 ''Order Rejecting Order Nos. 2003 and 2003–A Compliance Filings,'' 108 FERC ¶61,104 (2004). The Filing Parties state that the Standard Large Generator Interconnection Agreement is intended to function as a stand alone *pro forma* agreement and is not intended to be incorporated into the tariffs of any of the Filing Parties.

Comment Date: 5 p.m. Eastern Time on January 26, 2005.

7. California Independent System Operator Corporation

[Docket No. ER04–445–006]

Take notice that on January 5, 2005, the California Independent System Operator Corporation (IS)), pursuant to the Commission's July 30, 2004 ''Order Rejecting Order Nos. 2003 and 2003–A Compliance Filings,'' 108 FERC ¶ 61,104 (July 30 Order), and section 205 of the Federal Power Act, submitted for filing standard large generator interconnection procedures, for incorporation into the ISO tariff, and other proposed modifications to the ISO tariff, in compliance with the July 30 Order.

Comment Date: 5 p.m. Eastern Time on January 26, 2005.

8. Pacific Gas and Electric Company

[Docket Nos. ER04–688–003, ER04–689–004, ER04–690–003, ER04–693–003 (Not Consolidated)]

Take notice that on January 10, 2005, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the order issued in the captioned dockets on December 3, 2004, 109 FERC ¶ 61,255.

The ISO states that this filing has been served upon all parties on the official service list for the captioned dockets. In addition, the ISO has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. Eastern Time on January 31, 2005.

9. Midwest Independent Transmission System Operator, Inc.; Public Utilities With Grandfathered Agreements in the Midwest ISO Region

[Docket Nos. ER04–691–016, EL04–104–015]

Take notice that on January 7, 2005, the Potomac Economics Ltd., tendered for filing pursuant to FERC's Order on Rehearing issued November 8, 2004, a clarification of the Commission's August 6, 2004 Order Conditionally Accepting Tariff Sheets to Start Energy Markets and Establishing Settlement Judge Procedures on the Midwest Independent Transmission System Operator, Inc.'s open access transmission and energy markets tariff. Potomac Economics Ltd states that it is the independent market monitor for the MISO.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

10. Midwest Independent Transmission System Operator, Inc.; Public Utilities With Grandfathered Agreements in the Midwest ISO Region

[Docket Nos. ER04–691–017, EL04–104–016]

Take notice that on January 7, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's November 8, 2004 Order, Midwest Independent Transmission System Operator, Inc., et al., 109 FERC ¶ 61,157 (2004). The Midwest ISO has requested a March 1, 2005 effective date for the tariff pages submitted in the compliance filing, and also a waiver of the service requirements set forth in 18 CFR 385.2010.

The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO members, member representatives of transmission owners and non-transmission owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO further states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

11. Midwest Independent Transmission System Operator, Inc.; Midwest Independent Transmission System Operator, Inc.; Midwest Independent Transmission System Operator, Inc.; Ameren Services Co., et al.

[Docket Nos. ER05–6–013, EL04–135–015, EL02–111–033, EL03–212–029]

Take notice that on January 11, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners (collectively Applicants) jointly submitted for filing ministerial revisions to proposed Schedules 21 and 22 of the Midwest ISO Open Access Transmission Tariff submitted on November 24, 2004 (as amended on December 1, 2004 and December 17, 2004) in compliance with the Commission's November 18, 2004 order in Docket Nos. ER05–6, EL04–135, EL02–111, and EL03–212, *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004).

Applicants state that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on February 1, 2005.

12. American Electric Power Service Corporation

[Docket No. ER05–31–001]

Take notice that on January 11, 2005, the American Electric Power Service Corporation (AEPSC) tendered for filing, pursuant to Commission's deficiency letter dated December 10, 2004, Substitute First Revised FERC Rate Schedule I&M No. 22 between Indiana Michigan Power Company (I&M) and Northern Indiana Public Service Company (NIPSCo). AEP requests an effective date of October 11, 2004.

AEPSC states that a copy of the filing was served upon Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: 5 p.m. Eastern Time on February 1, 2005.

13. Delmarva Power & Light Company

[Docket No. ER05–33–001]

Take notice that on January 6, 2005, Delmarva Power & Light Company (Delmarva), tendered for filing an amendment to its October 12, 2004 filing in Docket No. ER05–33–000. Delmarva states this amendment is in response to a deficiency letter issued by the Commission on December 7, 2004.

Comment Date: 5 p.m. Eastern Time on January 27, 2005.

14. Dominion Energy New England, Inc.; Dominion Energy Salem Harbor, LLC; Dominion Energy Brayton Point, LLC; Dominion Energy Manchester Street, Inc.

[Docket Nos. ER05–34–001, ER05–35–001, ER05–36–001, ER05–37–001]

Take notice that on January 10, 2005, Dominion Energy New England, Inc.; Dominion Energy Salem Harbor, LLC; Dominion Energy Brayton Point, LLC; and Dominion Energy Manchester Street, Inc., (collectively, Applicants) submitted their respective compliance filings as required by the Commission's December 10, 2004 Order in the above-referenced dockets.

Applicants state that copies of the filing were served on all parties in this proceeding.

Comment Date: 5 p.m. Eastern Time on January 31, 2005.

15. PJM Interconnection, L.L.C.

[Docket No. ER05–107–001]

Take notice that on January 10, 2005, PJM Interconnection, L.L.C. (PJM), submitted its response to the Commission's December 9, 2004 letter order concerning the service agreement filed by PJM on October 29, 2004 in these proceedings.

PJM states that copies of this filing were served upon all persons on the service list for this docket.

Comment Date: 5 p.m. Eastern Time on January 31, 2005.

16. Pinelawn Power LLC

[Docket No. ER05–305–001]

Take notice that on January 7, 2005, Pinelawn Power LLC (Pinelawn), filed with the Commission, pursuant to section 205 of the Federal Power Act, an ''Amended Application for Order Accepting Initial Market Based Rate Tariff and Granting Certain Waivers and Blanket Approvals,'' seeking authority to engage in the sale of electric energy, capacity and ancillary services at market-based rates. Pinelawn states that it is engaged in the business of owning and operating a 79.9 MW generation facility located in The Town of Babylon, New York. Pinelawn also seeks certain waivers and blanket approvals under the Commission's Regulations and the issuance of a Commission Order before February 4, 2005, granting the requested effective date of February 4, 2005 for its market based rate tariff.

Pinelawn states that a copy of the filing has been served on the Long Island Power Authority, the entity with which Pinelawn has contracted for the sale of the entire output of its facility.

Comment Date: 5 p.m. Eastern Time on January 24, 2005.

17. Texas-New Mexico Power Company

[Docket No. ER05–393–002]

Take notice that, on January 10, 2005, Texas-New Mexico Power Company (TNMP) tendered for filing two separate certificates of concurrence with respect to the informational filings by attorneys for El Paso Electric Company (EPE) on behalf of El Paso Electric Company (EPE), Public Service Company of New Mexico (PNM), and Texas-New Mexico Power Company (TNMP), with an effective date of January 1, 2005.

TNMP states that copies of the filing have been provided to EPE, PNM, Tri-State, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

Comment Date: 5 p.m. Eastern Time on January 31, 2005.

18. EnerNOC, Inc.

[Docket No. ER05–422–000]

Take notice that on January 5, 2005, EnerNOC, Inc. (EnerNOC) filed a notice of cancellation of its market-based rate electric tariff, Rate Schedule FERC No. 1, effective January 5, 2005.

EnerNOC states that copies of the filing were not served upon any party, because such cancellation affects no purchasers under EnerNOC's Rate Schedule FERC No. 1.

Comment Date: 5 p.m. Eastern Time on January 26, 2005.

19. Niagara Mohawk Power Corporation

[Docket No. ER05–425–000]

Take notice that on January 7, 2005, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing First Revised Original Sheet No. 1 under Niagara Mohawk's Rate Schedule FERC No. 178. Niagara Mohawk states that the tariff sheet submitted was revised to reflect the assignment and assumption of the rights, obligations, and liabilities under the rate schedule by Exelon Generation Company, LLC, from Sithe/independence Power Partners, L.P.

Niagara Mohawk requests an effective date of January 1, 2005, and request waiver of the Commission requirements in section 35.3(a) of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

20. American Electric Power Service Corporation

[Docket No. ER05–426–000]

Take notice that on January 7, 2005, American Electric Power Service Corporation (AEP), acting as agent for Southwestern Electric Power Company (SWEPCO) submitted for filing an amended East HVDC Interconnection Facilities Use and Maintenance Agreement among SWEPCO, AEP Texas Central Corporation (an affiliate of SWEPCO), Centerpoint Energy Houston Electric (Centerpoint) and Oncor Electric Delivery Company (Oncor). AEP states that the amended agreement includes a revised Appendix B that modifies the methodology for calculating indirect operation and maintenance costs under the existing agreement. AEP requests an effective date of January 1, 2005 for the amended Appendix B of the agreement.

AEP states that it has served copies of the filing on Centerpoint, Oncor, the Public Utility Commission of Texas and the Louisiana Public Service Commission.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

21. El Paso Electric Company

[Docket No. ER05–427–000]

Take notice that, on January 7, 2005, El Paso Electric Company (EPE) tendered for filing for informational purposes various agreements related to generation ownership, telecommunications, construction and operation/maintenance, settlements, and a power sale agreement. EPE states that it believes that these agreements are non-jurisdictional, or otherwise are not required to be filed, and requests that the Commission so rule. EPE also tendered for filing various amendments that were previously entered into for the Southwest New Mexico Transmission Project Participation Agreement, EPE respectfully requests waiver of the Commission's prior notice requirement so that these amendments may receive effective dates consistent with their contractual terms.

EPE states that copies of this filing were served upon the co-parties to the above-listed agreements.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

22. New York Independent System Operator, Inc.

[Docket No. ER05–428–000]

Take notice that on January 7, 2005, the New York Independent System Operator, Inc. (NYISO) filed proposed revisions to its market administration and control area services tariff (Services Tariff) to implement installed capacity demand curves for capability years 2005/2006, 2006/2007 and 2007/2008.

NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, and on the New York Public Service Commission. NYISO further states that in addition, the NYISO has served a copy of this filing on the electric utility regulatory agencies of New Jersey and Pennsylvania.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

23. PacifiCorp

[Docket No. ER05–429–000]

Take notice that on January 7, 2005, PacifiCorp tendered for filing pursuant to 18 CFR 35 of the Commission's Rules and Regulations, Supplement No. 6 to the February 25, 1976 Transmission Agreement between PacifCorp and Tri-State Generation and Transmission Association, Inc.

PacifiCorp states that copies of this filing were sent to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission and Tri-State.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

24. El Paso Electric Company

[Docket No. ER05–430–000]

Take notice that on January 7, 2005, El Paso Electric Company (EPE) tendered for filing Notices of Cancellation for FERC Rate Schedule Nos. 59 and 63. EPE states that these rate schedules are associated with agreements originally executed between EPE and Texas-New Mexico Power Company and Salt River Project Agricultural Improvement and Power District. EPE requests an effective date for the cancellation notices of April 1, 1988 for Rate Schedule No. 59, and May 1, 202 for Rate Schedule No. 63.

EPE states that copies of this filing were served upon Texas-New Mexico Power Company and Salt River Project.

Comment Date: 5 p.m. Eastern Time on January 28, 2005.

25. PECO Energy Company

[Docket No. ER05–431–000]

Take notice that on January 10, 2005, Exelon Corporation, on behalf of its subsidiary PECO Energy Company, submitted to the Commission an executed Interconnection Agreement by and between PECO Energy Company and Delmarva Power and Light Company for the Bradford-Colora-Conowingo 230 kV Interconnection, and designated as Service Agreement No. 1201 under the open access transmission tariff of PJM Interconnection L.L.C., PJM FERC Electric Tariff, Sixth Revised Volume No. 1.

Exelon Corporation states that copies of the proposed agreement has been served on Delmarva Power & Light Company and on PJM Interconnection, L.L.C.

Comment Date: 5 p.m. Eastern Time on January 31, 2005.

26. American Electric Power Service Corporation

[Docket No. ER05–432–000]

Take notice that on January 10, 2005, the American Electric Power Service Corporation (AEPSC) tendered for filing as Original Service Agreement No. 622 under FERC Electric Tariff, Third Revised Volume No. 6, an executed Letter Agreement (Agreement) for the establishment of a delivery point at Middleboro, Ohio between Ohio Power Company and Dayton Power & Light. AEP requests an effective date of November 30, 2004.

AEPSC states that a copy of the filing was served upon Dayton Power & Light and Public Utilities Commission of Ohio.

Comment Date: 5 p.m. Eastern Time on January 31, 2005.

27. Duke Energy Corporation

[Docket No. ER05–433–000]

Take notice that on January 10, 2005, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) submitted a revised Network Integration Service Agreement (NITSA) with North Carolina Municipal Power Agency Number 1 (NCMPA), which is designated as Third Revised Service Agreement No. 212 under Duke Electric Transmission FERC Electric Tariff Third Revised Volume No. 4.

Duke states that copies of the filing were served upon NCMPA and the South Carolina and North Carolina state public service commissions.

Comment Date: 5 p.m. Eastern Time on January 31, 2005.

28. American Electric Power Service Corporation

[Docket No. ER05–435–000]

Take notice that on January 11, 2005, the American Electric Power Service Corporation (AEPSC) tendered for filing pursuant to section 35.15 of the Commission's regulations, a Notice of Cancellation of an executed Interconnection and Operation Agreement between Kentucky Power Company and Kentucky Mountain Power, LLC, designated as Service Agreement No. 312 under American Electric Power Operating Companies' Open Access Transmission Tariff. AEP requests an effective date of January 10, 2005.

AEPSC states that a copy of the filing was served upon Kentucky Mountain Power, L.L.C. and the Kentucky Public Service Commission.

Comment Date: 5 p.m. Eastern Time on February 1, 2005.

29. Avista Corporation

[Docket No. ER05–436–000]

Take notice that on January 11, 2005, Avista Corporation, submitted a non-conforming long-term service agreement between Avista Corporation and Sovereign Power, Inc., Avista Corporation FERC Rate Schedule 319, for the sale of dynamic capacity at cost-based rates under Avista Corporation's FERC Electric Tariff Volume No. 10 and energy under Avista Corporation's FERC Electric Tariff Volume No. 9, effective January 23, 2005.

Avista states that copies of the filing were served upon Sovereign Power, Inc.

Comment Date: 5 p.m. Eastern Time on February 1, 2005.

30. Avista Corporation

[Docket No. ER05–437–000]

Take notice that on January 11, 2005, Avista Corporation (AVA) tendered for filing a Notice of Cancellation on rate schedule designation Service Agreement No. 15 With Cogentrix Energy Power Marketing, Inc. AVA requests an effective date of January 23, 2005.

AVA states that copies of this cancellation were served upon Cogentrix Energy Power Marketing, Inc.

Comment Date: 5 p.m. Eastern Time on February 1, 2005.

31. Wabash Valley Power Association, Inc.

[Docket No. ER05–438–000]

Take notice that on January 12, 2005, Wabash Valley Power Association, Inc. (Wabash Valley) submitted for filing Supplemental Agreements to the Wholesale Power Supply Contracts between Wabash Valley and two of its Members, Midwest Energy Cooperative, Inc. (''Midwest'') and Paulding-Putnam Electric Cooperative, Inc. Wabash Valley requests an effective date of January 1, 2005.

Wabash Valley states that copies of the filing were served upon each of Wabash Valley's Members and the public utility commissions in Illinois, Indiana, Michigan and Ohio.

Comment Date: 5 p.m. Eastern Time on February 2, 2005.

32. ISO New England Inc.

[Docket No. ER05–439–000]

Take notice that on January 11, 2005, ISO New England Inc. (ISO) submitted an application pursuant to section 205 of the Federal Power Act to revise RTO Market Rule 1 and conforming changes to appendix F of Market Rule 1, affecting the allocation of Real-Time RMR Operating Reserve charges.

The ISO states that copies of the filing have been served on all NEPOOL Participants, and the Governors and utility regulatory agencies of the New England States.

Comment Date: 5 p.m. Eastern Time on February 1, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–297 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

January 14, 2005.

a. *Type of Filing:* Notice of intent to file application for a new license.

b. *Project No.:* 6885.

c. *Date Filed:* December 28, 2004.

d. *Submitted By:* Richard Moss.

e. *Name of Project:* Cinnamon Ranch Hydroelectric Project.

f. *Location:* On Birch Creek and Middle Creek, near the Town of Bishop and Benton, Mono County, California. The project occupies lands of the United States within Inyo National Forest and lands administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act; 18 CFR 16.6 of the Commission's regulations.

h. *Effective Date of Current License:* January 1, 1960.

i. *Expiration Date of Current License:* December 31, 2009.

j. *The Project Consists of:* Two diversion flumes, a 5,940-foot penstock, a powerhouse with one turbine and generator with an installed capacity of 150 kW, access roads and a 5,176-foot long 12-kV transmission line.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Richard Moss, Cinnamon Ranch, 1049 Cinnamon Ranch Road, Bishop, CA 93514, (760) 933–2295.

l. *FERC Contact:* Ann-Ariel Vecchio, (202) 502–6351, *ann-ariel.vecchio@ferc.gov*.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2007.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number to access the document excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item k above.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Magalie R. Salas,

Secretary.

[FR Doc. E5–292 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–43–000]

Dominion Cove Point LNG LP; Notice of Technical Conference

January 13, 2005.

Take notice that the Commission will convene a technical conference on Thursday, February 3, 2005, at 1 p.m. (e.s.t.), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The purpose of the conference will be to discuss Cove Point's proposed tariff changes related to the rights of a current holder of capacity at the LNG terminal, and the rights of others, when the contract for the capacity is scheduled to terminate. The Commission directed its staff to convene this technical conference in a December 23, 2004 Order in this proceeding.[1]

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Jacob Silverman at (202) 502–8445 or e-mail *jacob.silverman@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–284 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–36–000 and CP04–41–000]

Weaver's Cove Energy L.L.C. and Mill River Pipeline L.L.C.; Notice of Meeting

January 14, 2005.

At the request of Mayor Edward Lambert, Jr., of Fall River, Massachusetts, Chairman Pat Wood will meet with the Mayor to receive comments on the Weaver's Cove Energy, L.L.C.'s proposed liquefied natural gas (LNG) import terminal and storage facility in Fall River, Massachusetts. The meeting will be held at the FERC headquarters at 888 First Street, NE., Washington, DC, in Hearing Room 2 from 9:30 to 10:30 a.m. (e.s.t.), Monday, January 24, 2005.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Magalie R. Salas,

Secretary.

[FR Doc. E5–295 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Dominion Cove Point LNG LP, 109 FERC ¶ 61,363 (2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

January 7, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the

docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited		
1. CP04–293–000, CP04–223–000, CP04–36–000, CP04–41–000.	12–29–04	Stephan Brigidi, Jerry M. Landay, Timothy Bennett.
Exempt		
1. CP04–36–000, CP04–41–000	12–29–04	Hon. Thomas F. Reilly.
2. CP04–37–000, *et al*	12–21–04	Charles Hatch, Laura Miller.
3. CP04–37–000	12–21–04	Hon. Mike Jackson.
4. CP04–37–000, *et al*	12–21–04	Hon. Samuel L. Neal, Jr.
5. CP04–37–000	12–21–04	Hon. Rick Perry.
6. CP04–37–000, *et al*	12–21–04	Hon. Terry Simpson.
7. CP04–37–000, *et al*	1–4–05	Hon. John Cornyn.
8. Project No. 2114–000	1–3–05	Laurel Heacock.
9. Project No. 2114–000	1–3–05	Roger D. Whitlam, Ph.D.
10. Project No. 2114–116	12–23–04	Hon. Kevin C. Duffy.

Magalie R. Salas,

Secretary.

[FR Doc. E5–293 Filed 1–25–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0053, FRL–7863–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Registration of Pesticide-Producing Establishments (EPA Form 3540–8); Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540–8A) and Pesticide Report for Pesticide-Producing Establishments (EPA Form 3540–16); EPA ICR Number: 0160.08, OMB Control Number 2070–0078

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0053, to EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: Enforcement and Compliance Docket and Information Center, Environmental Protection Agency, Mail Code 2201T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, telephone number: (202) 564–4146; fax number: (202) 564–0085; e-mail address: *howie.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2004–0053, which is available for public viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 564–1927. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are those which produce pesticides.

Title: EPA Application for Registration of Pesticide-Producing Establishments (EPA Form 3540–8); Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540–8A) and Pesticide Report for Pesticide-Producing Establishments (EPA Form 3540–16). EPA ICR Number: 0160.08, OMB Control Number 2070–0078. Scheduled to expire on July 31, 2005.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 7(a) requires that any person who produces pesticides or active ingredients subject to the Act must register with the Administrator of EPA

the establishment in which the pesticide is produced. This section further requires that the application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such an establishment. EPA Form 3540–8, Application for Registration of Pesticide-Producing Establishments, is used to collect the establishment registration information required by this section.

FIFRA section 7(c) requires that any producer operating an establishment registered under section 7 report to the Administrator within 30 days after it is registered, and annually thereafter by March 1st for certain pesticide/device production and sales/distribution information. The producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, sold or distributed in the past year. The supporting regulations at 40 CFR part 167 provide the requirements and time schedules for submitting production information. EPA Form 3540–16, Pesticide Reports for Pesticide-Producing Establishments, is used to collect the pesticide production information required by section 7(c) of FIFRA.

Establishment registration information, collected on EPA Form 3540–8, is a one-time requirement for all pesticide-producing establishments. Pesticide production information, reported on EPA Form 3540–16, is required to be submitted within 30 days of receipt of the Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540–8A), and annually thereafter on or before March 1.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden: The average annual burden to the industry over the next three years is estimated to be 2 person hours per response.

Respondents/affected entities: 13,000.

Estimated number of respondents: 13,000.

Frequency of responses: 1.

Estimated total annual hour burden: 26,000.

There are no capital/startup costs or operating and maintenance (O&M) costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 10, 2005.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 05–1375 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[R07–OAR–2005–MO–0001; FRL–7863–4]

Adequacy Determination for the St. Louis Area Ozone Maintenance State Implementation Plan for Transportation Conformity Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is informing the public that we have found the motor vehicle emissions budgets (MVEB) for volatile organic compounds and nitrogen oxides in the Missouri portion of the St. Louis area adequate for conformity purposes. The State of Missouri established MVEBs for 2007. The emission estimates for 2007 were included in the 1-hour ozone maintenance plan based on projected emission inventories for that year. This Notice formalizes the 2007 emissions estimates as budgets for future conformity determinations, including the conformity determination that is required by June 15, 2005, under the 8-hour ozone standard.

DATES: This rule is effective February 10, 2005.

ADDRESSES: The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/traqconf.htm* (click on ''Adequacy Web Pages'').

FOR FURTHER INFORMATION CONTACT: You may also contact Heather Hamilton, Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas 66101, or by e-mail at *hamilton.heather@epa.gov,* telephone (913) 551–7039.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to State Implementation Plans (SIPs) and established the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards. The SIPs must establish MVEBs to ensure that conformity is achieved.

The criteria by which we determine whether SIP motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We applied these criteria in finding that the submitted budgets are adequate.

We sent a letter to the Missouri Department of Natural Resources on December 17, 2004, stating that the motor vehicle emissions budgets in the St. Louis area for 2007 were found to be adequate. These budgets were projected emissions in the 1-hour ozone maintenance plan for St. Louis, although EPA approved a MVEB for

2014 as part of its approval of the maintenance plan. Because St. Louis must achieve the 8-hour ozone standard by 2010, budgets for an earlier year were determined to be necessary. The State's budgets for 2007 were approved through the adequacy process to be used for future conformity determinations. A conformity determination is required by June 15, 2005, for the 8-hour ozone standard. The 2007 budget will be used in that determination.

On March 2, 1999, the DC Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our adequacy finding, the St. Louis area may use the 2007 budget for future conformity determinations.

We described our process for determining the adequacy of submitted SIP budgets in a guidance memorandum dated May 14, 1999, entitled, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' We followed this guidance in making our adequacy determination. The proposed budget was posted on the Adequacy Web site on November 3, 2004. The comment period closed on December 2, 2004, and no comments were received. This action provides notice that the 2007 MVEB for the Missouri portion of the St. Louis area is adequate for conformity purposes.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 11, 2005.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 05–1372 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0347; FRL–7691–3]

Fluazifop-P-butyl; Risk Assessment(s) (Phase 3 of 4-Phase Process); Notice of Availability

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment(s) and related technical support documents for the pesticide fluazifop-P-butyl and opens a public comment period on these documents. Fluazifop-P-butyl is a selective, post-emergent herbicide registered for the control of annual and perennial grass weeds. EPA is developing a tolerance reassessment decision (TRED) for fluazifop-P-butyl through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0347, must be received on or before March 28, 2005.

ADDRESSES: Comments may be submitted electronically, by mail or through hand delivery/courier. Follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cathryn O'Connell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8041; e-mail address: *oconnell.cathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health and agricultural advocates; the chemical industry; pesticide users and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other RelatedInformation?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0347. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA Dockets. EPA's policy is that copyrighted material will not be placed in EPA Dockets but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA Dockets. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA Dockets. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA Dockets.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA Dockets as EPA receives them and without change, unless the comment contains copyrighted material, CBI or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA Dockets. The entire printed comment, including the copyrighted

material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA Dockets. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA Dockets. Where practical, physical objects will be photographed, and the photograph will be placed in EPA Dockets along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.''. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA Dockets. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA Dockets to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in docket ID number OPP–2004–0347. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address or other contact information, unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0347. In contrast to EPA Dockets, EPA's e-mail system is not an ''anonymous access''system. If you send an e-mail comment directly to the docket without going through EPA Dockets, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA Dockets.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0347.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202–4501, Attention: Docket ID Number OPP–2004–0347. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA Dockets or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA Dockets. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA Dockets without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadlineidentified.

8. To ensure proper receipt by EPA, identify the docket ID number assigned to this action in the subject line on the first page of your response. It would also be helpful if you provided the name, date and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessment(s) and related technical support documents for fluazifop-P-butyl. EPA developed the risk assessment(s) for fluazifop-P-butyl through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Fluazifop-P-butyl is a selective, post-emergent herbicide registered for the control of annual and perennial grass weeds and is currently registered for food/feed use on asparagus, carrot,

coffee, cotton, endive (escarole), garlic, macadamia nut, onion, pecan, pepper, rhubarb, soybeans, stone fruits, sweet potato and yam, as well as for use on lawns/turf.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment(s) for fluazifop-P-butyl. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin or income, in the development, implementation and enforcement of environmental laws, regulations and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices or other factors, may have atypical, unusually high exposure to fluazifop-P-butyl, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues and degree of public concern associated with each pesticide. For fluazifop-P-butyl, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments.

However, if as a result of comments received during this 60-day comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed. EPA may issue the fluazifop-P-butyl TRED for public comment.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for fluazifop-P-butyl. Comments received after the close of the comment period will be marked ''late''. EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other''appropriate regulatory action''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 6, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–1028 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0202; FRL–7698–2]

Notice of Receipt of Request for an Amendment to Delete Certain Uses in a Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by a registrant to delete certain uses in a pesticide registration. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective on February 25, 2005, unless the Agency receives a written withdrawal request on or before February 25, 2005. The Agency will consider withdrawal requests postmarked no later than February 25, 2005.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before February 25, 2005.

ADDRESSES: Written withdrawal requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket identification (ID) number OPP–2002–0202 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mark T. Howard, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; e-mail address:*howard.markt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0202. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at*http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Written Withdrawal Requests?

1. *Electronically*—i. *E-mail.* E-mail your written withdrawal requests to: Mark T. Howard at *howard.markt@epa.gov*, Attention: Docket ID Number OPP–2002–0202.

ii. *Disk or CD ROM.* Written withdrawal requests on disk or CD ROM may be mailed to the address in Unit I.C.2. or delivered by hand or courier to the address in Unit I.C.3., Attention: Docket ID Number OPP–2002–0202. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your written withdrawal requests to: Mark T. Howard, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0202.

3. *By hand delivery or courier.* Deliver your written withdrawal requests to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2002–0202. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of an application from a registrant to delete certain uses in a pesticide registration. The registration is listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted.

TABLE 1.—REGISTRATION WITH REQUEST FOR AMENDMENT TO DELETE CERTAIN USES IN A PESTICIDE REGISTRATION

EPA Registration No.	Product Name	Active Ingredient	Uses Being Deleted
554-144	Lindane ST 40	Lindane	Broccoli, Brussels sprouts, cabbage, cauliflower, and radish

Users of this product who desire continued use on crops or sites being deleted should contact the applicable registrant before February 25, 2005 to discuss withdrawal of the application for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING AN AMENDMENT TO DELETE CERTAIN USES IN A PESTICIDE REGISTRATION

EPA Company No.	Company Name and Address
554	AGSCO Inc. P.O. Box 13458 Grand Forks, ND 58208–3458

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Mark T. Howard using the instructions in Unit I.C. The Agency will consider written withdrawal requests postmarked no later than February 25, 2005.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrant to sell or distribute the product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 18, 2005.

Peter Caulkins

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–1370 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7863–8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability of Technitrol, Inc. (''Settling party'') under CERCLA for response costs incurred and to be incurred at the Malvern TCE Superfund

Site, East Whiteland and Charlestown Townships, Chester County, Pennsylvania.

DATES: Comments must be provided on or before February 25, 2005.

ADDRESSES: Comments should be addressed to Lydia Guy, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Joan A. Johnson (3RC41), (215) 814–2619, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

SUPPLEMENTARY INFORMATION: Notice of *de minimis* settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland and Charlestown Townships, Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice. The proposed agreement has been reviewed and approved by the United States Department of Justice.

The Settling Party has agreed to pay $38,854.00 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. This amount to be paid by the Settling Party was based upon EPA's determination of Settling Party's fair share of liability of Settling Party relating to the Site. Monies collected from the Settling Party will be applied towards past and future response costs incurred at or in connection with the site. The settlement includes a premium payment equal to either 125% of the estimated future response costs incurred in connection with the Site. The settlement also includes a reservation of rights by EPA, pursuant to which EPA reserves its rights to seek recovery from the Settling Party of response costs incurred by EPA in connection with the site to the extent such costs exceed $31.2 million.

EPA is entering into this agreement under the authority of sections 107 and 122(g) of CERCLA, 42 U.S.C. 9607 and 9622(g). Section 122(g) authorizes settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with Settling Party in connection with the Site, based upon a determination that Settling Party is responsible for 0.75 percent or less of the volume of hazardous substance sent to the Site. As part of this *de minimis* settlement, EPA will provide to the Settling Party a covenant not to sue or take administrative action against the Settling Party for reimbursement of response costs or injunctive relief pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, or for injunctive relief pursuant to section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, with regard to the Site.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this notice. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d). A copy of the proposed Administrative Order on Consent can be obtained from Joan A. Johnson, U.S. Environmental Protection Agency, Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, or by contacting Joan A. Johnson at (215) 814–2619.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–1442 Filed 1–25–05; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 14, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Jeannie A. Benfaida, Federal Communications Commission, 445 12th Street, SW, Washington DC, 20554, (202) 418–2313 or via the Internet at *jeannie.benfaida@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1004.

OMB Approval Date: 01/30/2004.

Expiration Date: 01/31/2007.

Title: Wireless Telecommunications Bureau Standardizes Carrier Reporting on Wireless E911 Implementation.

Form No.: N/A.

Estimated Annual Burden: 1232 responses; 1362 total annual burden hours; 5 hours average per respondent.

Needs and Uses: Nationwide wireless carriers (Tier I) and mid-sized wireless carriers (Tier II) generally must file quarterly reports with the Commission on February 1, May 1, August 1 and November 1 of each year. Both Tier I and Tier II carriers must include with their quarterly reports an Excel spreadsheet detailing certain elements related to their E911 implementation status at Public Service Answering Points (PSAPs). Information reported on the spreadsheet as an appendix to the broader narrative set forth in the text of a carrier's the report, includes PSAP ID, PSAP Name, PSAP State, PSAP County; Implementation Phase; Air Interface; Date PSAP Request Made; Date PSAP Request Withdrawn; Invalid Request; Deployed; Date Deployed; Date Projected; Reasons; and Comment. Submission of the Excel spreadsheet will permit the Commission to track wireless E911 deployment, alert the Commission to any anticipated problems that could delay the implementation of E911 service nationwide, permit the Commission to track wireless E911 deployment in a more uniform and consistent manner, as well as inform and assist stakeholders in coordinating their deployment efforts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–1368 Filed 1–25–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at (202) 523–5793 or via email at *tradeanalysis@fmc.gov.* Interested

parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011852–017.

Title: Maritime Security Discussion Agreement.

Parties: China Shipping Container Lines, Co., Ltd.; CMA CGM, S.A.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority; Metropolitan Stevedore Co.; P&O Ports North America, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Universal Maritime Service Corp.; Virginia International Terminals; and Yusen Terminals, Inc.

Filing Parties: Carol N. Lambos; Lambos & Junge; 29 Broadway, 9th Floor; New York, NY 10006 and Charles T. Carroll, Jr.; Carroll & Froelich, PLLC; 2011 Pennsylvania Avenue, NW., Suite 301; Washington, DC 20006.

Synopsis: The amendment deletes Hanjin Shipping Co. Ltd. and COSCO Container Lines Company Limited as members to the agreement.

Agreement No.: 011897.

Title: CCNI/Maruba Slot Exchange Agreement.

Parties: Compania Chilena de Navegacion Interoceanica, S.A. and Maruba, S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The subject agreement would permit the parties to exchange slots on their respective services in the trade between U.S. Pacific Coast ports, on the one hand, and Pacific Coast ports of Canada, Mexico, Guatemala, Costa Rica, El Salvador, Colombia, Peru, and Chile and ports in China, Hong Kong, Taiwan, and Korea, on the other hand.

By Order of the Federal Maritime Commission.

Dated: January 21, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–1449 Filed 1–25–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Independent Transport Line, LLC d/b/a ITL, 7600 Avenue P, Berth 46–48, Houston, TX 77262–5298. *Officer:* Tina Marie Modica, President, (Qualifying Individual)

Internet Shipping Lines, Inc., 153–40 Rockaway Blvd., Jamaica, NY 11434. *Officer:* Metin Nerkis, CEO, (Qualifying Individual)

You First Express, Inc., 1204 W. Gardena Blvd., #D, Gardena, CA 90247. *Officer:* Kyu Weon Choi, CEO, (Qualifying Individual)

LOF Express, Inc., 1125 Satellite Blvd., #110, Suwanee, GA 30024. *Officers:* Young J. Kim, Secretary, (Qualifying Individual), Jennifer Lee, President

Bridge International Logistics Limited, 1565 Windridge Place, Apt. #C, Troy, OH 45373. *Officers:* William R. Netzley, CEO, (Qualifying Individual), Marina I. Demoss, Vice President

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Karibbean America Logistics, Inc., 3741 NW 66th Avenue, Miami, FL 33166. *Officers:* Jorge M. Palacios, President, (Qualifying Individual)

ABAD Air, Inc., 8170 NW 66th Street, Miami, FL 33166. *Officer:* Wladimir Abad, President, (Qualifying Individual)

YJC Global, Inc., 4444 Casa Grande, #61, Ciprés, CA 90630. *Officers:* Byung Keun Han, President, (Qualifying Individual), Jeong M. Kim, Secretary

3 Plus Logistics Co., 20250 S. Alameda Street, Rancho Dominguez, CA 90221. *Officers:* Jae Hoon Juhn, Vice President, (Qualifying Individual), Peter Young Suk Kim, President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

A.W.L.I. Group, Inc. d/b/a Amber Worldwide Logistics, 147–60 175th Street, Jamaica, NY 11434. *Officers:* Elaine Rosendorf, President, (Qualifying Individual), Keith Milliner, Vice President

A.W.L.I. Group Inc. d/b/a Amber Worldwide Logistics, 1358 NW 78th Avenue, Miami, FL 33126. *Officers:* Elaine Rosendorf, President, (Qualifying Individual), Keith Milliner, Vice President

Dated: January 21, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–1448 Filed 1–25–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 10, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jerry and Marlys Waldo, both of Republican City, Nebraska; to acquire voting shares of Commercial State Holding Company, Inc., and thereby indirectly acquire voting shares of Commercial State Bank, both of Republican City, Nebraska.

Board of Governors of the Federal Reserve System, January 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–1428 Filed 1–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 2005.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Central Bancshares, Inc., Lexington, Kentucky; to acquire 100 percent of the voting shares of First Bank, Inc., Louisville, Kentucky.

2. Commodore Financial Network, Inc., Somerset, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Commodore Bank, Somerset, Ohio.

3. Hometown Bancorp, Inc., Kent, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Home Savings Bank, Kent, Ohio.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Freedom Bancshares, Inc., Sheldon, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Bank, Sheldon, Iowa (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Southern Trust Bancshares, Inc., Goreville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of SouthernTrust Bank, Goreville, Illinois (in organization).

D. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Frontier Management LLC, and Frontier Holdings, LLC, both of Madison, Nebraska; to become bank holding companies by acquiring 100 percent of the voting shares of Bank of Madison, Madison, Nebraska.

E. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Western Sierra Bancorp, Cameron Park, California; to acquire 100 percent of the voting shares of Gold Country Financial Services, Inc., Marysville, California, and thereby indirectly acquire Gold County, N.A., Marysville, California.

Board of Governors of the Federal Reserve System, January 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–1429 Filed 1–25–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Amendment To Extend for One Year the January 24, 2003, Declaration Regarding Administration of Smallpox Countermeasures, as Amended on January 24, 2004

AGENCY: Office of the Secretary (OS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: Concern that terrorists may have access to the smallpox virus and attempt to use it against the American public and United States Government facilities abroad continues to exist. The January 24, 2003, declaration regarding administration of smallpox countermeasures, as amended on January 24, 2004, is extended for one year until and including January 23, 2006.

DATES: This Notice is effective as of January 24, 2005.

FOR FURTHER INFORMATION CONTACT: William F. Raub, Ph.D., Principal Deputy Assistant Secretary for the Office of Public Health and Emergency Preparedness, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 690–7383 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224(p) of the Public Health Service Act, which was established by section 304 of the Homeland Security Act of 2002 and amended by section 3 of the Smallpox Emergency Personnel Protection Act of 2003 (''SEPPA''), is intended to alleviate certain liability concerns associated with administration of smallpox countermeasures and, therefore, ensure that the countermeasures are available and can be administered in the event of a smallpox-related actual or potential public health emergency such as a bioterrorist incident.

On January 24, 2003, due to concerns that terrorists may have access to the smallpox virus and attempt to use it against the American public and U.S. Government facilities abroad, the Secretary issued a declaration making section 224's legal protections available. The declaration was effective until and including January 23, 2004. On January 24, 2004, the Secretary amended the definitions contained in the January 24, 2003 declaration in light of the statutory amendments in section 3 of SEPPA because such definitions were no longer appropriate, and extended the declaration for one year until January 23, 2005. Pursuant to section 224(p)(2)(A), the Secretary issues the amendment below to extend for one year up to and including January 23, 2006 the January 24, 2003 declaration, as amended.

Amendment To Extend January 24, 2003 Declaration, as Amended, Regarding Administration of Smallpox Countermeasures

I. Policy Determination

The underlying policy determinations of the January 24, 2003 declaration continue to exist, including the heightened concern that terrorists may

have access to the smallpox virus and attempt to use it against the American public and U.S. Government facilities abroad.

II. Amendment of Declaration

I, Claude A. Allen, Acting Secretary of the Department of Health and Human Services, have concluded, in accordance with the authority vested in me under section 224(p)(2)(A) of the Public Health Service Act, that a potential bioterrorist incident makes it advisable to extend the January 24, 2003 declaration, as amended, regarding administration of smallpox countermeasures until and including January 23, 2006. The January 24, 2003, declaration, as amended, may be further amended as circumstances require.

III. Effective Dates

This extension is effective January 24, 2005 until and including January 23, 2006. The effective period may be extended or shortened by subsequent amendment to the January 24, 2003, declaration.

Dated: January 21, 2005.

Claude A. Allen,

Acting Secretary.

[FR Doc. 05–1479 Filed 1–25–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates:

8:30 a.m.–5 p.m., February 16, 2005.
8:30 a.m.–3 p.m., February 17, 2005.

Place: Doubletree Hotel (Atlanta/Buckhead), 3342 Peachtree Rd. NE., Atlanta, Georgia 30326, Telephone: (404) 231–1234.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from the Food and Drug Administration, the Centers for Medicare & Medicaid Services, and the Centers for Disease Control and Prevention; implementation of cytology proficiency testing for individuals; a report from the CLIAC Workgroup on Good Laboratory Practices for Waived Testing, and discussion of the Workgroup's proposals related to such; and an introduction to appropriate quality control for diverse and evolving test systems, including microbiology identification systems. Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. *Oral Comments:* In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. *Written Comments:* For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Office of Public Health Partnerships, CDC, 4770 Buford Highway, NE, Mailstop F–11, Atlanta, Georgia 30341–3717; telephone (770) 488–8042; fax (770) 488–8279; or via e-mail at *RWhalen@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 20, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–1390 Filed 1–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announce the following Federal Committee meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates:

8 a.m.–6:30 p.m., February 10, 2005.
8 a.m.–4:30 p.m., February 11, 2005.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, N.E., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on Hepatitis B vaccine recommendations; recommendations of use of Hepatitis A vaccine; Human Papilloma Virus vaccine working group update; Meningococcal conjugate vaccine and possible VFC vote on meningococcal vaccine use if the vaccine is licensed; varicella prevention; influenza vaccine recommendations for 2005; pertussis vaccine booster dose policy; polio outbreak response and stockpile planning; revisions to the general recommendations; yellow fever vaccine safety work group update; proposal for use of Evidence-based recommendations; rotavirus vaccine update; and Departmental updates.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone (404) 639–8096, fax (404) 639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: January 20, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–1389 Filed 1–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Financial Report for Tribes (ACF–696T).

OMB No.: 0970–0195.

Description: The Child Care and Development Fund (CCDF) annual financial reporting form (ACF–696T) provides a mechanism for Indian tribes to report expenditures under the CCDF program. The CCDF program provides funds to tribes, as well as States and Territories, to assist low-income families in obtaining child care so that they can work or attend training/education, and to improve the quality of care. Information collected via the ACF–696T allows the Administration for Children and Families (ACF) to monitor expenditures and to estimate outlays, and may be used to prepare ACF budget submissions to Congress. The proposed information collection is identical to the currently used ACF–696T form for which the Office of Management and Budget (OMB) approval expires on March 31, 2005.

Respondents: Indian tribes and tribal organizations that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T CCDF Financial Reporting Form for Tribes	232	1	7.5	1,740

Estimated Total Annual Burden Hours: 1,740.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 730 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, e-mail address: *Katherine_T.Astrich@omb.eop*.

Dated: January 18, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–1397 Filed 1–25–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: LIHEAP Quarterly Allocation Estimates.

OMB No.: 0970–0037.

Description: The Low Income Home Energy Assistance Program (LIHEAP) Quarterly Allocation Estimates Form–535 is a one-page form that is sent to 50 State grantees and the District of Columbia. It is also sent to tribal grantees that receive over $1 million annually and that directly administer the LIHEAP Program. Grantees are asked to complete and submit the form in the 4th quarter of every fiscal year. The data collected on the form are the grantee's estimates of obligations that they expect to make each quarter during the upcoming fiscal year. This is the only method used to request anticipate distribution of the grantee's LIHEAP funds for the program year. The information is used to disburse LIHEAP funds in accordance with grantee needs and to develop OMB apportionment requests.

Respondents: State, local or tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form ACF–535	55	1	.25	13.75

Estimated Total Annual Burden Hours: 13.75.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 18, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–1398 Filed 1–25–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0012]

Agency Information Collection Activities; Proposed Collection; Comment Request; Allergen Labeling of Food Products Consumer Preference Survey and Experimental Study on Allergen Labeling of Food Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary consumer survey entitled ''Allergen Labeling of Food Products Consumer Preference Survey'' and an experimental study entitled ''Experimental Study on Allergen Labeling of Food Products.''

DATES: Submit written or electronic comments on the collection of information by March 28, 2005.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Allergen Labeling of Food Products Consumer Preference Survey

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the Nation's food supply. FDA is planning to conduct a consumer survey about allergen labeling of food products under this authority. The Allergen Labeling of Food Products Consumer Preference Survey will collect information to gauge the impact of certain changes to the food label with respect to information about allergenic ingredients. This data collection is needed to satisfy some of the requirements of the Food Allergen Labeling and Consumer Protection Act (FALCPA) (Public Law 108–282, title II, section 204.4), including the requirement that FDA provide data on consumer preferences in a report to Congress. In particular, section 204.4 of the FALCPA asks FDA to describe in the report ''* * *how consumers with food allergies or the caretakers of consumers would prefer that information about the risk of cross-contact be communicated on food labels as determined by using appropriate survey mechanisms.'' In addition, the survey will address other issues pertinent to allergen labeling changes mandated by the FALCPA. The data will be collected by means of a pool of people who will be screened (through self-report) for food allergy, and food allergy caregiver status. A balanced sample of 1,000 will be selected. Participation in the survey is voluntary.

FDA estimates the burden of the Allergen Labeling of Food Products Consumer Preference Survey collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	35,000	1	35,000	.0055	193
Pre-test	30	1	30	.167	5

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Survey	1,000	1	1,000	.167	167
Total					365

[1]There are no capital costs or operating maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with consumer surveys very similar to this proposed study.

Experimental Study on Allergen Labeling of Food Products

As previously above, under section 903(b)(2) of the act, FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the Nation's food supply. FDA is planning to conduct an experimental study about allergen labeling of food products under this authority. The Experimental Study on Allergen Labeling of Food Products will collect information to gauge the impact of certain changes to the food label with respect to information about allergenic ingredients. This data collection is needed to satisfy some of the requirements of the FALCPA, including the requirement that FDA provide data on consumer preferences with regard to allergen labeling in a report to Congress. In particular, section 204.4 of the FALCPA asks FDA to describe in the report ''* * *how consumers with food allergies or the caretakers of consumers would prefer that information about the risk of cross-contact be communicated on food labels as determined by using appropriate survey mechanisms.'' The allergen labeling experiment will supplement data collected by the Allergen Labeling of Food Products Consumer Preference Survey. In addition, the experiment will address other issues pertinent to allergen labeling changes mandated by the FALCPA. The experimental study data will be collected using an Internet panel of approximately 600,000 people who will be screened (through self-report) for food allergy, and food allergy caregiver status. Participation in the allergen experimental study is voluntary.

FDA estimates the burden of the Experimental Study on Allergen Labeling of Food Products collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	600,000	1	600,000	.0028	1,680
Pre-test	30	1	30	.167	5
Experiment	9,000	1	9,000	.167	1,503
Total					3,188

[1]There are no capital costs or operating maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with internet panel experiments similar to the study proposed here.

Dated: January 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–1395 Filed 1–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0386]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 25, 2005.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Title: Draft Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP

Description: The draft guidance is intended to provide information to manufacturers of veterinary and human drugs, including human biological drug products, on how to resolve disputes of scientific and technical issues relating to current good manufacturing practice (CGMP). Disputes related to scientific and technical issues may arise during FDA inspections of pharmaceutical manufacturers to determine compliance with CGMP requirements, or during FDA's assessment of corrective actions undertaken as a result of such inspections. The draft guidance provides procedures that will encourage open and prompt discussion of disputes and lead to their resolution. The draft guidance describes procedures for raising such disputes to FDA's Office of Regulatory Affairs and center levels and for requesting review by the dispute resolution (DR) panel.

When a scientific or technical issue arises during an FDA inspection, the manufacturer should initially attempt to reach agreement on the issue informally with the investigator. Certain scientific or technical issues may be too complex or time-consuming to resolve during the inspection. If resolution of a scientific or technical issue is not accomplished through informal mechanisms before the issuance of the Form FDA 483, the manufacturer can formally request DR and can use the formal two-tiered DR process described in the draft guidance.

Tier-one of the formal DR process involves scientific or technical issues raised by a manufacturer to the ORA and center levels. If a manufacturer disagrees with the tier-one decision, tier-two of the formal DR process would then be available for appealing that decision to the DR Panel.

If a manufacturer disagrees with the scientific or technical basis for an observation listed by an investigator on a Form FDA 483, the manufacturer can file a written request for formal DR with the appropriate ORA unit as described in the draft guidance. The request for formal DR should be made within 10 days of the completion of an inspection, and should include all supporting documentation and arguments for review, as described in the following paragraphs. If a manufacturer disagrees with the tier-one decision in the formal DR process, the manufacturer can file a written request for formal DR by the DR Panel. The manufacturer should provide the written request for formal DR and all supporting documentation and arguments, as described in the following paragraphs, to the DR Panel within 60 days of receipt of the tier-one decision.

All requests for formal DR should be in writing and include adequate information to explain the nature of the dispute and to allow FDA to act quickly and efficiently. Each request should be sent to the appropriate address listed in the draft guidance and include the following:

- Cover sheet that clearly identifies the submission as either a request for tier-one DR or a request for tier-two DR;
- Name and address of manufacturer inspected (as listed on Form FDA 483);
- Date of inspection (as listed on Form FDA 483);
- Date the Form FDA 483 issued (from the Form FDA 483);
- FDA Establishment Identification (FEI) Number, if available (from Form FDA 483);
- FDA employee names and titles that conducted inspection (from Form FDA 483);
- Office responsible for the inspection, e.g., district office, as listed on the Form FDA 483;
- Application number if the inspection was a preapproval inspection;
- Comprehensive statement of each issue to be resolved:

Identify the observation in dispute.

Clearly present the manufacturer's scientific position or rationale concerning the issue under dispute with any supporting data.

State the steps that have been taken to resolve the dispute, including any informal DR that may have occurred before the issuance of the Form FDA 483.

Identify possible solutions.

State expected outcome.

- Name, title, telephone and fax number, and e-mail address (as available) of manufacturer contact.

Description of Respondents: Pharmaceutical manufacturers of veterinary and human drug products and human biological drug products.

Burden Estimate: FDA has reviewed the total number of informal disputes that currently arise between manufacturers and investigators (and FDA district offices) when a manufacturer disagrees with the scientific or technical basis for an observation listed on a Form FDA 483. FDA estimates that approximately 12 such disputes occur annually. FDA believes that the number of requests for formal DR under the draft guidance would be higher because manufacturers have expressed reluctance to dispute with the agency scientific or technical issues raised in an investigation in the absence of a formal mechanism to resolve the dispute. In addition, manufacturers have requested the formal mechanisms in the draft guidance to facilitate the review of such disagreements. Therefore, FDA estimates that approximately 25 manufacturers will submit approximately 25 requests annually for a tier-one DR. FDA also estimates that approximately five manufacturers will appeal approximately five of these requests to the DR Panel (request for tier-two DR).

Based on the time it currently takes manufacturers to prepare responses to FDA concerning issues raised in a Form FDA 483, FDA estimates that it will take manufacturers approximately 30 hours to prepare and submit each request for a tier-one DR and approximately 8 hours to prepare and submit each request for a tier-two DR.

Based on the methodology and assumptions in the previous paragraphs, table 1 of this document provides an estimate of the annual reporting burden for requests for a tier-one DR and requests for a tier-two DR under the draft guidance.

ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Requests for Tier-One Dispute Resolution	25	1	25	30	750

ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
≤Requests for Tier-Two Dispute Resolution	5	1	5	8	40
Total					790

[1] There are no capital costs or operating and maintenance costs associated with this collection.

In the **Federal Register** of September 5, 2003 (68 FR 52777), FDA announced the availability of a draft guidance for industry entitled ''Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP.'' The notice requested comments on the information collection estimates within 60 days. No comments were received on the information collection estimates. This document requests comments on the information collection burden that FDA estimates will result from the draft guidance.

The draft guidance was drafted as part of FDA's initiative ''Pharmaceutical cGMPs for the 21st Century: A Risk-Based Approach,'' which was announced in August 2002. The initiative focuses on FDA's current CGMP program and covers the manufacture of veterinary and human drugs, including human biological drug products. The agency formed the DR Working Group comprising representatives from ORA, the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Veterinary Medicine. The working group met weekly on issues related to the DR process and met with stakeholders in December 2002 to seek their input.

The draft guidance was initiated in response to industry's request for a formal DR process to resolve differences related to scientific and technical issues that arise between investigators and pharmaceutical manufacturers during FDA inspections of foreign and domestic manufacturers. In addition to encouraging manufacturers to use currently available DR processes, the draft guidance describes a formal two-tiered DR process that provides a formal mechanism for requesting review and decision on issues that arise during inspections:

- Tier-one of the DR process provides a mechanism to raise scientific or technical issues to the ORA and center levels.
- Tier-two of the DR process provides a mechanism to raise scientific or technical issues to the agency's DR Panel for Scientific and Technical Issues Related to Pharmaceutical CGMP (DR Panel).

The draft guidance also covers the following topics:

- The suitability of certain issues for the formal DR process, including examples of some issues with a discussion of their appropriateness for the DR process.
- Instructions on how to submit requests for formal DR and a list of the supporting information that should accompany these requests.
- Public availability of decisions reached during the DR process to promote consistent application and interpretation of drug quality-related regulations.

Dated: January 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–1396 Filed 1–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0004]

Draft Guidance for Industry on Nonclinical Safety Evaluation of Drug Combinations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Nonclinical Safety Evaluation of Drug Combinations.'' The guidance provides recommendations on nonclinical approaches to support the clinical study and approval of fixed-dose combination products (FDCs), copackaged products, and adjunctive therapies.

DATES: Submit written or electronic comments on the draft guidance by April 26, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Abby Jacobs, Center for Drug Evaluation and Research (HFD–540), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2020.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Nonclinical Safety Evaluation of Drug Combinations.'' Drug combinations include FDCs, copackaged products, and adjunctive therapies. An FDC is a product in which two or more separate drug components (active pharmaceutical ingredients) are combined in a single dosage form. A copackaged product consists of two or more separate drug products in their final dosage form, packaged together with appropriate labeling to support the combination use. An adjunctive therapy refers to the situation in which a patient is maintained on a second drug product that is used together with (i.e., in adjunct to) the primary treatment, although the relative doses are not fixed and the drugs need not be given at the same time. Adjunctive therapy products may or may not be labeled for concomitant use. The guidance discusses all three types of drug combinations. However, it is only intended to describe general guiding principles. To receive more detailed

advice regarding a particular drug combination development program, a sponsor should contact the appropriate review division before submitting an Investigational New Drug application. In addition, FDA is in the process of publishing more specific guidance for certain categories of drug combinations.

The guidance discusses drug combinations involving the following items: (1) Previously marketed drugs, (2) one or more new molecular entities (NMEs) and one or more previously marketed drugs, and (3) more than one NME. The nonclinical studies considered important for each type of combination may differ, depending upon the information available on each drug component (active pharmaceutical ingredient). The nonclinical studies that would be appropriate to adequately characterize the combination depend on the toxicologic and pharmacokinetic profiles of the individual drugs, the treatment indication or indications, and the intended population.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on nonclinical safety evaluation of drug combinations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–1394 Filed 1–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute (NHLBI); Opportunity for a Cooperative Research and Development Agreement (CRADA) to Identify and Explore Epigenetic Regulatory Elements for Diagnostic and Therapeutics Purposes

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Heart, Lung, and Blood Institute (NHLBI) is seeking Cooperative Research and Development Agreement (CRADA) collaborator(s) to work with investigators in the Laboratory of Molecular Immunology (LMI) to identify epigenetic regulatory elements that may be involved in the disease development of T and/or B cell leukemia/lymphoma and other cancers via genome-wide analysis of acetylation islands using the Genome-Wide Mapping Technique (GMAT). Representative disease-specific acetylation islands will be explored for diagnostic and therapeutic purposes.

SUPPLEMENTARY INFORMATION: Epigenetics play a critical role in cellular development and cellular transformation in many pathogenic processes. For example, many cancers are correlated with changes of their chromatin structure and are sensitive to drugs that modulate the levels of histone acetylation. Epigenetic regulation refers to the modification of chromatin including posttranslational modification of histones, which does not involve change of DNA sequences of target genes. MHLBI investigators have mapped the genome-wide distribution of histone H3 acetylation in human T cells and discovered over 40,000 acetylation islands using a technique called GMAT. This tool combines Chromatin immunoprecipitation (Chip) of hyper-acetylated histones, with Serial Analysis of Gene Expression (SAGE). The acetylation islands are epigenetic markers for transcriptional regulatory elements and chromatin controlling elements. Changes of the acetylation islands may be correlated with early development of T cell lymphoma or leukemia. Therefore, this discovery may be applied to early diagnosis and/or treatment of these diseases.

The NHLBI is seeking capability statements from parties interested in entering into a CRADA to identify, explore and further develop epigenetic regulatory elements/acetylation islands for diagnostic and therapeutic purposes. The role of the CRADA collaborator(s) will include, but not be limited to, the following:

1. The ability to collaborate with NHLBI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to on-going research and development.

2. To assist with obtaining specimen/tissues (patient and normal controls) for the Genome-Wide analysis as diagnostic and therapeutic markers.

3. To assist to further developing the epigenetic regulatory elements markers/acetylation islands as new targets for novel drug-development strategies.

The collaborator may also be expected to contribute financial support under this CRADA for personnel, supplies, travel, and equipment to support these projects. The collaborator is also expected to cooperate with the NHLBI in the timely publication of research results and to accept the legal provisions and language of the CRADA with only minor modifcations, if any.

DATES: CRADA capability statements should be submitted to Vincent Kolesnitchenko, Ph.D., Technology Transfer Specialist, National Heart, Lung, and Blood Institute (NHLBI), Office of Technology Transfer and Development, National Institutes of Health, 6705 Rockledge Drive, Suite 6018, MSC 7992, Bethesda, MD 20892–7992; Phone: (301) 594–4115; Fax: (301) 594–3080; E-mail: *vk5q@nih.gov*. Capability statements must be received on or before March 28, 2005.

The NHLBI has applied for patents claiming the core of the technology. Non-exclusive and/or exclusive licenses for these patents covering core aspects of this project are available to interested parties.

Licensing inquiries regarding this technology should be addressed to John Stansberry, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804, Phone: (301) 435–5236; Fax: (301) 402–0220; E-mail: *stansbej@od.nih.gov*. Information about Patent Applications and pertinent information not yet publicly described an be obtained under the terms of a Confidential Disclosure Agreement.

Respondents interested in submitting a CRADA Proposal should be aware that it may be necessary to secure a license to the above-mentioned patent rights in order to commercialize products arising from a CRADA.

Dated: January 14, 2005.

Dr. Carl Roth,

Associate Director for Scientific Program Operations, National Heart, Lung, and Blood Institute.

[FR Doc. 05–1412 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Treatment of Inappropriate Immune Responses

Drs. He Xu and Allan D. Kirk (NIDDK)
U.S. Provisional Patent Application filed Jun 18, 2004 (DHHS Reference No. E–102–2004/0–US–01)
Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Activated human leukocytes play an essential role in counter-adaptive immune responses such as allograft rejection, autoimmune disease, and graft-versus-host disease. Depletion of leukocytes involved in these responses by using preparations of leukocytes-specific antibodies may be therapeutic in preventing and reversing these conditions. To date, however, the available monoclonal preparations do not have sufficiently broad specificity to limit the activity of many types of cells involved in counter-adaptive immunity, and the available polyclonal preparations have significant side effects caused by their unintended specificity for bystander cells or cells with beneficial properties.

The NIH announces a new treatment for blocking an undesirable immune response, wherein polyclonal antibodies are designed to preferentially target activated immune cells, rather than resting immune cells or blood cells involved in non-immune processes. These antibodies have a heightened specificity for activated lymphocytes and monocytes and decreased activity for resting or beneficial leukocytes and other blood elements.

A Novel Nuclear Receptor Cofactor Modulates Glucocorticoid-Responsive Gene Expression

S. Stoney Simons and Yuanzheng He (NIDDK);
U.S. Patent Application No. 60/548, 039 filed 26 Feb 2004 (DHHS Reference No. E–056–2004/0–US–01);
Licensing Contact: Susan Carson, (301) 435–5020; *carsonsu@mail.nih.gov.*

Nuclear receptors are ligand-activated transcription factors that regulate a wide range of biological processes and dysfunction of these receptors can lead to proliferative, reproductive and metabolic diseases, such as cancer, infertility, obesity and diabetes. Nuclear receptors are the second largest class of drug targets and the market for nuclear receptor targeted drugs is estimated to be almost 15% of the $400 billion global pharmaceutical market. Researchers at the National Institute of Diabetes and Digestive and Kidney Disease have isolated a novel protein termed STAMP (SRC–1 and TIF–2 Associated Modulatory Protein) that interacts with the biologically active domains of the coactivators TIF–2 and SRC–1 (J. Biol. Chem. (2002) 51, 49256–66) and present data which support a role for STAMP as an important new factor in the glucocorticoid regulatory network. There remains a need for novel therapeutics that specifically block or enhance specific genes and an emerging therapeutic goal is the discovery of agents that modulate co-activators or co-repressors in a tissue specific manner.

The invention is a novel protein that plays a key role in modulating transcriptional properties of glucocorticoid receptor (GR)-steroid complexes during both gene induction and gene repression, and is likely to modulate the transcriptional properties of all the steroid receptors including androgen, mineralocorticoid and progesterone receptors. The inventors have shown that ectopically expressed STAMP protein both modulates the EC50 of glucocorticoid receptor-agonist complexes for induced genes and increases glucocorticoid receptor-repressive activity of suppressed genes in a manner that is inhibited by specific siRNAs under physiologically relevant conditions. The modulation of STAMP levels at the cell or organism level could possibly be used as a therapeutic able to modify inappropriate gene expression that occurs in certain diseases or as a result of long-term steroid treatment.

Available for licensing are claims directed to compositions which are capable of modulating the GR gene expression in a mammalian cell using DNA, siRNA or antibodies and to methods of shifting a steroid dose-response curve, where less of the steroid needs to be administered because the composition contains the STAMP polypeptide. The novel STAMP functional sequence can be used in a composition of matter claim or as a target that could be regulated by an antibody or perhaps other modulator that would vary the ability of STAMP to either induce or repress the activity of glucocorticoid receptors. Diseases that could be treated include: hypertension, diabetes, cardiovascular disease, osteoporosis, Cushing's Disease as well as any disease requiring chronic steroid treatment such as Rheumatoid Arthritis, Asthma, inflammatory and auto-immune diseases. The present invention provides a broad, flexible IP platform that should be of interest to companies which focus on nuclear receptors as drug target and lead discovery generators, as well as to companies which have the capability to develop STAMP's potential as a therapeutic.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Generation of Smad3-Null Mice and Smad4-Conditional Mice

Chuxia Deng (NIDDK);
DHHS Reference Nos. E–349–2003/0 and E–350–2003/0—Research Tools;
Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@mail.nih.gov.*

SMADs are a novel set of mammalian proteins that act downstream of TGF-beta family ligands. These proteins can be categorized into three distinct functional sets, receptor-activated SMADs (SMADs 1, 2, 3, 5, and 8), the common mediator SMAD (SMAD 4), and inhibitory SMADs (SMADs 6 and 7). SMAD proteins are thought to play a role in vertebrate development and tumorigenesis.

One of the research tools our NIH inventors have prepared is the Smad3-null mice model, created by disrupting exon 8 on the *Smad3* gene. Symptomatic mice exhibit leukocytosis, with massive inflammation and pyogenous abscess formation adjacent to mucosal surfaces. Smad3 plays an important role in mediating TGF-beta signals in T lymphocytes and in neutrophils, and demonstrate that Smad3 deficiency results in immune dysregulation and susceptibility to opportunistic infection, ultimately leading to the lethality of the mice between 1 and 8 months. TGF-beta signals also play a role in cancer formation in multiple organs and tissues. Smad3-null mice could be used to clone downstream target genes for TGF-beta signals, which may be used in gene therapy and chemoprevention studies.

Smad4-null mice die around embryonic day 6.5, so the inventors prepared the SMAD4-conditional mice model, created by a *Smad4* conditional knockout allele at exon 8 using Cre-mediated recombination. PCR analysis determined Cre-mediated recombination in the pancreas but not in a number of other organs, indicating that the *Smad4* conditional allele can be recombined to delete exon 8 in a tissue-specific fashion. This knockout mouse could be used to test the function of TGF-beta/Smad4 signals at all stages of mouse development. Interestingly, mutation of human *Smad4* has been found in approximately half of all pancreatic cancers, 30 percent of colon cancers, and about 10 percent in other cancers. The Smad4-conditional mice could be used to study pathways that are involved in formation of these tumors or to clone downstream target genes that may be used in gene therapy and chemoprevention studies.

Additional information may be found in the following research articles: Yang *et al.*, ''Generation of Smad4/Dpc4 conditional knockout mice,'' Genesis 2002 Feb; 32(2):80–81, Epub 13 Feb 2002 doi 10.1002/gene.10029; Yang *et al.*, ''Targeted disruption of SMAD3 results in impaired mucosal immunity and diminished T cell responsiveness to TGF-beta,'' EMBO J. 1999 Mar 1; 18(5):1280–1291, Epub doi: 10.1093/emboj/18.5.1280.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Anti-Proliferative Activity of an Unexpected mTOR Kinase Inhibitor

Joel Moss and Arnold Kristof (NHLBI);
U.S. Provisional Patent Application No. 60/528,340 filed 09 Dec 2003 (DHHS Reference No. E–259–2003/0–US–01); PCT Application filed 09 Dec 2004 (DHHS Reference No. E–259–2003/0–PCT–02);
Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov.*

The second leading cause of death in the United States is cancer and more than one million Americans are diagnosed with cancer each year, with this number likely to increase as the population ages. There remains a need for effective therapeutics with improved safety profiles, and promising results have been obtained from targeting the phosphatidylinositol-3-kinase (PI3K) signalling cascade (including PI3K, AKT/PKB and mammalian target of rapamycin (mTOR/S6K) kinases) which is integral to the regulation of cell growth, protein synthesis and apoptosis in response to nutrients and mitogens, and which is frequently dysregulated in different cancers and other proliferative diseases. In particular, efforts have been directed at inhibiting specific kinases in this pathway as effective treatments for cancer, restenosis and autoimmune diseases and researchers at the National Heart, Lung and Blood Institute have recently shown that one of the 4H-1-benzopyran-4—one derivatives is unexpectedly an effective mTOR inhibitor.

Proof of concept data is available. This compound has been shown to attenuate tumor growth in an in vivo human xenograft PC–3 prostate tumor model, without observed toxicity. An improved therapeutic safety profile is suggested, as this compound was a weak inhibitor of PI3K. Further data indicate that inhibition of cell proliferation occurs through both mTOR-dependent and mTOR-independent mechanisms, suggesting a novel kinase inhibitor. Additionally, this cytostatic compound is shown to have an anti-inflammatory effect in peritoneal macrophages. Finally, this compound inhibits primary human smooth muscle cell proliferation in vitro, suggesting a possible role in the treatment of vascular restenosis.

This compound may therefore prove to be an effective anti-proliferative therapeutic. Available for licensing are methods of use directed to derivatives of 2-(4-piperazinyl)-substituted 4H-1-benzopyran-4—one compounds as antiproliferative, immunosuppressive and anti-neoplastic agents.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA contact: Vincent Kolesnitchenko; Tel: (301) 402–5579; E-mail: kolesniv@nhlbi.nih.gov).

Methods for Making and Using Mass Tag Standards for Quantitative Proteomics

David E. Anderson (NIDDK);
U.S. Provisional Application No. 60/574,612 filed 25 May 2004 (DHHS Reference No. E–200–2003/0–US–01);
Licensing Contact: Fatima Sayyid; (301) 435–4521; *sayyidf@mail.nih.gov.*

There is a growing need for peptide standards for quantitative proteomic analysis of gene and cellular functions in cells and tissues. Current methods for generating peptide standards for identification and absolute quantification of proteins rely almost solely on synthetic approaches which require expensive reagents, equipment and rare expertise.

The present invention describes a process for simultaneously generating peptide standards of known concentration for several proteins of interest within a single easily parallelized experiment. This process uses a combination of automated synthetic gene design, gene synthesis, cloning, bacterial expression with heavy isotope incorporation, generic protein purification, optical quantitation, and endoprotease cleavage to make sets of peptides of known concentration. Non-modified peptides can be made for a fraction of the cost of synthetic approaches. Since the main cost involves the initial production of a DNA construct, follow-up preparations of peptides (which can use different isotope backgrounds) are even cheaper.

A Method of Treating Inflammatory Bowel Disease (IBD)

Warren Strober, Ivan Fuss, Frank Heller, Richard Blumberg (NIAID); PCT Application No. PCT/US2002/018790 filed 14 Jun 2002, which published as International Publication No. WO 2004/001655 on 31 Dec 2003 (DHHS Reference No. E–131–2002/0–PCT–01)
Licensing Contact: Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Ulcerative colitis (UC) is a chronic inflammatory disease of the colorectum and affects approximately 400,000 people in the United States (of these, approximately 5 percent develop colon cancer). The cause of UC is not known, although an abnormal mucosal T cell, responsive to bacterial antigens in the gut microflora, is thought to be

involved. Present treatments for UC include anti-inflammatory therapy using aminosalicylates or corticosteroids, as well as immunomodulators and diet. However, 25–40 percent of ulcerative colitis patients must eventually have their colons removed due to massive bleeding, severe illness, rupture of the colon, risk of cancer or due to side effects of corticosteroids and novel treatments are still actively being sought. NIH scientists and their collaborators have used a mouse model of experimental colitis (OC) to show that IL–13, a Th2 cytokine, is a significant pathologic factor in OC and that neutralizing IL–13 in these animals effectively prevents colitis (Immunity (2002) 17, 629–638).

OC is a colitis induced by intrarectal administration of a relatively low dose of the haptenating agent oxazolone subsequent to skin sensitization with oxazolone. A highly reproducible and chronic colonic inflammation is obtained that is histologically similar to human ulcerative colitis. Studies show that NKT cells rather than conventional CD4+T cells mediate oxazolone colitis and that NKT cells are the source of IL–13, and are activated by CD1 expressing intestinal epithelial cells. Tissue removed from UC patients were also shown to contain increased numbers of nonclassical NKT cells that produce markedly increased amounts of IL–13 and that in keeping with epithelial damage being a key factor in UC, these NKT cells are cytotoxic for epithelial cells (J. Clin. Investigation (2004) 113, 1490–1497).

With obvious implications for the treatment of human Ulcerative Colitis, inflammation in this mouse model has been shown to be effectively blocked by neutralizing IL–13 or by inhibiting the activation of NK–T cells through CD1. Available for licensing are broad claims covering treatments preventing the inflammatory response of colitis by modulating IL–13 and NKT cell activity and methods for screening for therapeutic compounds effective for colitis.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Dated: January 18, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–1415 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Null Mutation of the CCAAT/Enhancer Binding Protein Delta (Cebpd) Gene in Mice

G. Esta Sterneck *et al.* (NCI);
DHHS Reference No. E–032–2005/0—Research Tool;
Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov.*

The invention describes mice with a deletion of the C/EBPdelta gene and cell lines derived from such mice. C/EBPdelta (CCAAT/enhancer binding protein delta) is implicated in the acute phase inflammatory response, long-term memory, fat cell and osteoblast differentiation, ovarian hormone responses, mammary gland involution and cell death. C/EBPdelta may also be a tumor suppressor. Fibroblasts lacking C/EBPdelta exhibit transformed features such as impaired contact inhibition, reduced serum dependence and chromosomal instability. The mice and cell lines of the invention could be useful for the study of the function of C/EBPdelta such as its potential role in cancer, and to investigate how drug responses are modified in the absence of C/EBPdelta.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Active Chromatin Domains Are Defined by Acetylation Islands Revealed by Genome-Wide Mapping

Drs. Keji Zhao and Tae-Young Roh (NHLBI);
U.S. Provisional Application No. 60/619,430 filed 15 Oct 2004 (DHHS Reference No. E–008–2005/0–US–01);
Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov.*

Epigenetics play a critical role in cellular development and cellular transformation in many pathogenic processes. For example, many cancers are correlated with changes of their chromatin structure and are sensitive to drugs that module the levels of histone acetylation. Epigenetic regulation refers to the modification of histones, which does not involve changes of DNA sequences of target genes. The present technology maps the genome-wide distribution of histone H3 acetylation in human T cells and describes over 40,000 acetylation islands. These acetylation islands are epigenetic markers for transcriptional regulatory elements and chromatin-controlling elements. Changes in acetylation islands may be correlated with early development of T cell lymphoma or leukemia. Specifically, diseases characterized by aberrant transcriptional regulation could be diagnosed earlier with the application of this technology.

Method of Detecting Cancer Based on Immune Reaction to BORIS

Victor Lobanenkov *et al.* (NIAID);
U.S. Provisional Application No. 60/611,798 filed 21 Sep 2004 (DHHS Reference No. E–241–2004/0–US–01);
Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

The invention provides a method of detecting autoantibodies to BORIS (brother of the regulator of imprinted sites) as a possible screen for cancer and a kit comprising BORIS peptides and epitopes. BORIS is a protein that is expressed in many cancers but not in normal tissues (except testis) and thus is a potential target for a cancer therapeutic or diagnostic.

Importantly, BORIS is a cancer-testis (CT) antigen, which despite that it is intracellular protein upon abnormal expression in cancer it appears to be immunogenic in humans. Thus, BORIS could be employed in cancer diagnosis using serum from patients. In fact, the inventors detected BORIS-specific antibodies in serum from patients with gliomas, lung, breast and prostate

cancer, but not in serum from normal controls.

Few other serum markers are currently in use for cancer diagnosis and they have limited predictive power. Thus, the detection of tumor related anti-BORIS antibodies suggests that the invention has great potential for detection and treatment of a wide variety of cancers.

In addition, the background of the current invention is found in DHHS Reference No. E–227–2001.

Primer and Probe Sequences for Use in a Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions

Steven K. Libutti *et al.* (NCI);
U.S. Provisional Application No. 60/622,643 filed 26 Oct 2004 (DHHS Reference No. E–124–2004/1);
Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

The present invention discloses primer and probe sequences that can be used for distinguishing between benign and malignant thyroid lesions. Analysis of thyroid lesions by traditional means, such as fine needle biopsy, can result in indeterminate results. Thus, there is a need for methods that increase the precision of diagnosis. The primers and probes represent a 6 gene or 10 gene model for diagnosing benign from malignant thyroid cancer. Analysis of these genes in thyroid lesions taken from patients could be used for molecular classification of the lesions.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

New Gene Encoding a Membrane Protein Highly Expressed in Many Breast Cancers and Not in Normal Tissues

B. Lee, K. Egland, and I. Pastan (NCI);
U.S. Provisional Application No. 60/493,522 filed 08 Aug 2003 (DHHS Reference No. E–292–2003/0–US–01);
U.S. Patent Application No. 10/913,196 filed 05 Aug 2004 (DHHS Reference No. E–292–2003/0–US–02);
PCT Application No. PCT/US04/25448 filed 06 Aug 2004 (DHHS Reference No. E–292–2003/0–PCT–03);
Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

The current invention relates to a new polypeptide (termed 68h05) that is specifically detected in breast cancer and prostate cancer cells, and not in normal tissue. In addition, 16 out of 21 breast tumors and three out of three prostate tumors expressed 68h05. This invention might have utility as a vaccine therapeutic, antibody-based therapeutic, immunoconjugate therapeutic, or as a diagnostic for the diagnosis or treatment of breast or prostate cancer.

Dated: January 19, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–1419 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 7–8, 2005.

Closed: February 7, 2005, 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: February 8, 2005, 8:30 a.m. to Adjournment.

Agenda: A Report of the FIC Director on updates and overviews of new FIC initiatives. Topics to be discussed: Fogarty in Brazil: A Geneology of Infectious Disease Training and Research.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Jean L. Flagg-Newton, PhD, Special Assistant to the Director, FIC, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Building 31, Room B2C29, Bethesda, MD 20892, (301) 496–2968, *flaggnej@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1348 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities, STRB.

Date: February 15–17, 2005.

Open: February 15, 2005, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Double Tree Hotel & Executive Mtg. Ctr., 1750 Rockville Pike, Rockville, MD 20852.

Closed: February 15, 2005, 9 a.m. to Adjourment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel & Executive Mtg. Ctr., 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd, Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: March 1–3, 2005.

Open: March 1, 2005, 8 a.m. to 9 a.m.

Agenda: To discuss program and planning and other issues.

Place: Double Tree Hotel & Executive Mtg. Ctr., 1750 Rockville Pike, Rockville, MD 20852.

Closed: March 1, 2005, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel & Executive Mtg. Ctr., 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd, Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1345 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Sources Special Emphasis Panel, COBRE Review Panel 1.

Date: February 23–24, 2005.

Time: February 23, 2005, 8: a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institute of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1076, Bethesda, MD 20892–4874, (301) 435–0814, *lambert@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, COBRE Review Panel 2.

Date: March 2–3, 2005.

Closed: March 2, 2005, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institute of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1076, Bethesda, MD 20892–4874, (301) 435–0814, *lambert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1346 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Small Grants in Digestive Diseases and Nutrition.

Date: March 1, 2005.

Time: 4:30 p.m. to 6 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: January 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1343 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant tot section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: February 8, 2005.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council Business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested personal may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1344 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Hazardous Materials Worker Health and Safety Training.

Date: February 22–24, 2005.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Hazmat Training at DOE Nuclear Weapons Complex.

Date: February 25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1347 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: February 28, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yan Z Wang, BA, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957, *wangy1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1417 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: February 1, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Digestive Sciences Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Group.

Date: February 9–10, 2005..

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurobiology, PTSD and Heart Disease.

Date: February 10, 2005.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Malaria.

Date: February 16, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian, Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov..*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group Genomics, Computational Biology and Technology Study Section.

Date: February 17–18, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037 *dayc@csr.nih.gov..*

Name of Committee: Center for Scientific Review Special Emphasis Panel Nuclear Dynamics and Transport R01 Applications.

Date: February 17–18, 2005.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023 *steinbem@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group; Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: February 17–18, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *langubm@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: February 18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695 *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Human Brain Project/NeuroInformatics.

Date: February 18, 2005.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Cognitive Neuroscience Study Section.

Date: February 21–22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review; National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, ZRG1 GTIE (01): Gene Therapy and Inborn Errors.

Date: February 21–22, 2005.

Time: 5 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr @csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: February 22, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Predoctoral Fellowships (F31) Minority/Disability: CVS, DIG, IFCN, MOSS, RUS.

Date: February 22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–1243, *begumn@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: February 23–25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, (301) 435–1718, kelseym*csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

Date: February 23–24, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: February 23–24, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *litwackm@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: February 23–25, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Epidemiology of Clinical Disorders and Aging Study Section.

Date: February 23–25, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 SBIB H 40P: Shared Resource: Magnetic Resonance and Optical Imaging.

Date: February 23–24, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1258, *petrosia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 18, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1349 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Cancellation of Meeting

Notice is hereby given of the cancellation of the Biological Rhythms and Sleep Study Section, February 9, 2005, 9:00 a.m. to February 9, 2005, 5:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on January 18, 2005, 70 FR 2872–2875.

The meeting is cancelled due to a lack of quorum.

Dated: January 19, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1418 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: Therapeutics for the Treatment of Autoimmune Disease

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), announces that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent No. 6,083,503, entitled ''Interleukin-2 stimulated T lymphocyte cell death for the treatment of autoimmune diseases, allergic responses, and graft rejection'' (DHHS Reference E–137–1991/0–US–03); U.S. Patent No. 5,989,546 entitled ''Interleukin-2 stimulated T lymphocyte cell death for the treatment of allergic responses'' (DHHS Reference E–137–1991/0–US–04); U.S. Patent No. 5,935,575, entitled ''Interleukin-4 stimulated T lymphocyte cell death for the treatment of allergic disorders'' (DHHS Reference E–151–1992/0–US–11); U.S. Patent Application No. 08/431,644 filed May 2, 1995 entitled ''Modified Myelin Basic Protein Molecules'' (DHHS Reference E–033–1996/0–US–01); and U.S. Patent Application No. 08/482,114 filed June 7, 1995 entitled ''Modified Proteolipid Protein Molecules'' (DHHS Reference E–

128–1996/1–US–01); to Apogenix Biotechnology AG, having a place of business in Heidelberg, Germany. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to therapeutics for the treatment of Multiple Sclerosis.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before March 28, 2005, will be considered.

ADDRESSES: Requests for copies of the patent and/or patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Mojdeh Bahar, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–2950; Facsimile: (301) 402–0220; E-mail: *baharm@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology claimed in the aforementioned patents is a method for the treatment or prevention of autoimmune diseases, allergic or atopic disorders, and graft rejections. The instant method comprises inducing the death by apoptosis of a subpopulation of T lymphocytes that is capable of causing such diseases, while leaving the majority of other T lymphocytes unaffected. Cell death is achieved by cycles comprising challenging via immunization these T cells with antigenic substance at short time intervals, or by immunization followed by administering interleukin-2 (IL–2) when these T cells are expressing high levels of IL–2 receptor so as to cause these T cells to undergo apoptosis upon re-immunization with the antigenic peptide or protein.

The technologies in the aforementioned patent applications are directed to compositions and methods for clinical assessment, diagnosis and treatment of Multiple Sclerosis (MS). The compositions are molecules related to the human proteolipid protein (PLP), and the 21.5 kDA fetal isoform of human myelin basic protein (MBP), and include nucleic acids and polypeptides. The nucleic acids are useful in the efficient production of modified PLP polypeptides and modified and unmodified MBP polypeptides and the polypeptides are useful for assaying T cells for responsiveness to MBP and PLP epitopes. They are further useful as therapeutic agents that act by inducing T cell responses, including apoptosis, as a means of treating MS.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 19, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–1413 Filed 1–25–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20120]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Vessel Inspection Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to these specific issues of towing safety. The meetings will be open to the public.

DATES: The Towing Vessel Inspection Working Group will meet on Wednesday, March 2, 2005 from 1:30 p.m. to 4:30 p.m. and on Thursday, March 3, 2005 from 8:30 a.m. to 2 p.m. The meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 18, 2005. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before February 18, 2005.

ADDRESSES: The Working Group will meet in the 4th Floor All-Hands Conference Room (#4202), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Please bring a government-issued ID with photo (*e.g.*, driver's license). Send written material and requests to make oral presentations to Mr. Gerald Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2005–20120.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat.770, as amended).

Agenda of Working Group Meetings

The agenda for the Towing Vessel Inspection Working Group tentatively includes the following items:

(1) Identify and discuss the elements that would comprise a safety management system for use in towing vessel inspection program including audit, oversight and enforcement of this safety management system.

(2) Identify and discuss equipment standards appropriate for a towing vessel inspection program including use of existing standards and incorporation of new standards.

(3) Identify and discuss the use of a risk-based approach incorporating available casualty data and other input to develop and support working group proposals.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director (as provided above in for further information contact) no later than February 18, 2005. Written material for distribution at the meeting should reach the Coast Guard no later than February 18, 2005.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Miante at the number listed in **FOR FURTHER**

INFORMATION CONTACT as soon as possible.

Dated: January 18, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–1422 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2005, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Trong Quan, National Finance Center, Collections Section, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2004–111, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2005, and ending March 31, 2005. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning April 1, 2005, and ending June 30, 2005.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4

Dated: January 19, 2005.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 05–1382 Filed 1–25–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) of One Public Collection of Information; Law Enforcement Officer Flying Armed Training and Certification

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on a new information collection requirement abstracted below that will be submitted to OMB for approval in compliance with the Paperwork Reduction Act.

DATES: Send your comments by March 28, 2005.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Purpose of Data Collection

TSA is requesting the collection of this information to comply with 49 CFR 1544.219, which requires Federal and state law enforcement officers (LEOs) that are flying armed with a firearm to complete the Flying Armed Training course. TSA assumed responsibility for the LEO Flying Armed Training course under Section 107(a) of the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71) (codified at 49 U.S.C. 44918 Crew Training). The course is a non-tactical overview of the conditions under which an officer may fly armed with a firearm, their expected behavior while flying armed, and the scope of their authority while in the air. After training is completed, TSA will solicit written feedback from the LEOs using a TSA training evaluation form. This collection would permit TSA to collect identifying information from LEOs who register for this training course and to solicit voluntary feedback from the participants on the quality of training.

Description of Data Collection

Identifying information would be gathered from LEOs who have registered for the LEO Flying Armed Training program to confirm that they are eligible for this program (*i.e.*, that they are active law enforcement officers who have an operational need to fly armed and receive the training). The course will be offered to Federal law enforcement agencies via CD-ROM or at the basic training course that LEOs attend at Federal training academies, such as the Federal Law Enforcement Training Center (FLETC) and the FBI and the Drug Enforcement Administration (DEA) Academies in Quantico, Virginia.

For state and local LEOs, the course will be offered on a secure site over the Internet. State and local LEOs will be required to log onto the FLETC website, which will provide a link to the TSA LEO Flying Armed website. TSA will collect information when they register for the course and then maintain a record of successful completion, which is verified with a certificate the LEO will show at the airport-screening checkpoint.

If the TSA agent on site doubts a LEO's authenticity when the LEO presents his or her credentials at the airport to fly, the TSA agent on site will contact the TSA's Transportation Security Operations Center (TSOC), , for identity verification. To verify the LEO's identity, the TSOC representative will direct the TSA agent to ask the LEO a series of questions, which the LEO was required to answer during the course registration (*e.g.*, Where is your high school located?).

After training is completed, TSA would solicit written feedback from the LEO training using a TSA training evaluation form. Completion of the form would be voluntary and anonymous. TSA proposes an annual certification for this training process. The number of potential respondents is 40,000 LEOs. The estimated annual reporting burden is 7500 hours annually with an estimated annual cost burden of $673,248.

Use of Results

TSA Headquarters and authorized airport personnel (airport screeners) will use the registration information to verify

the need and identities of the LEOs who must fly armed. The registration information and the certificate of successful completion from this collection will also provide TSA Headquarters personnel and airport personnel with the means to prevent unauthorized, or non-certified, LEOs from flying with a firearm unnecessarily and without proper training. The results of the training evaluation forms will assist TSA in determining whether this training and certification should be an annual process.

Issued in Arlington, Virginia, on January 14, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–1404 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group's Cultural and Historic Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting and cancellation.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Cultural and Historic Task Group (subcommittee) will meet in Pinedale, Wyoming, for a business meeting. Task Group meetings are open to the public.

DATES: The PAWG Cultural and Historic Task Group have scheduled meetings on the following dates: April 28, 2005, from 5 p.m. until 9 p.m. and May 26, 2005 from 5 p.m. to 9 p.m.

ADDRESSES: Both PAWG Cultural and Historic Task Group meetings will be held in the BLM Pinedale Field Office conference room at 432 E. Mill St., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Dave Vlcek at 307–367–5327 or Kierson Crume at 307–367–5343, BLM/Cultural and Historic TG Liaisons, Bureau of Land Management, Pinedale Field Office, 432 E Mills St., P.O. Box 768, Pinedale, WY, 82941.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field. After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource-or activity-specific Task Groups, including one for cultural and historic. Public participation on the Task Groups was solicited through the media, letters, and word-of-mouth.

The agenda for these meetings will include information gathering and discussion related to implementation and funding of the adopted cultural and historic resources monitoring plan for the Pinedale Anticline gas field. At a minimum, public comments will be heard just prior to adjournment of the meeting.

Dated: January 13, 2005.

Priscilla E. Mecham,

Field Office Manager.

[FR Doc. 05–1378 Filed 1–25–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet jointly with the California Bay-Delta Authority on February 9 and 10, 2005. The agenda for the joint meeting will include reports from the Director, the Lead Scientist, the Independent Science Board, and the BDPAC Subcommittees; information on proposed State legislation and the Environmental Water Account Technical Review Panel Report; updates on the Delta levees and the Delta Improvements Package; and discussions on the Finance Plan Framework Implementation Strategy and the Multi-Year Program Plans with State and Federal agency representatives.

DATES: The meeting will be held on Wednesday, February 9, 2005, from 9 a.m. to 4 p.m., and on Thursday, February 10, 2005, from 9 a.m. to 4 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Sacramento Convention Center, 1400 J Street, Room 315, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Jamie Cameron-Harley, California Bay-Delta Authority, at (916) 445–5511, or Diane Buzzard, Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide recommendations to the Secretary of the Interior, other participating Federal agencies, the Governor of the State of California, and the California Bay-Delta Authority on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the California Bay-Delta Authority Web site at *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.,* the Endangered Species Act, 16 U.S.C. 1531 *et seq.,* and the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.,* and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Public Law 102–575.)

Dated: January 12, 2005.

Allan Oto,

Special Projects Officer, Mid-Pacific Region.

[FR Doc. 05–1490 Filed 1–25–05; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–465]

Commercial Availability of Apparel Inputs (2005): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African, Caribbean Basin, and Andean Countries

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

DATES: *Effective Date:* January 19, 2005.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on January 13, 2005, the Commission instituted investigation No. 332–465, Commercial Availability of Apparel Inputs (2005): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries. The Commission instituted the investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice regarding the probable economic effect of granting preferential treatment to apparel made from fabrics or yarns that are the subject of petitions filed in 2005 with the Committee for the Implementation of Textile Agreements (CITA) under the ''commercial availability'' provisions of the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA). The Commission conducted similar investigations in the years 2001–04 to provide advice with respect to petitions filed in those years.

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466, *jackie.jones@usitc.gov*) or Heidi Colby-Oizumi (202–205–3391; *heidi.colby@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091, *william.gearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819; *margaret.olaughlin@usitc.gov*). General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov.*

Background: The Commission will follow procedures similar to those followed in the commercial availability reviews in 2004 under investigation No. 332–458. Thus, in 2005, the Commission will provide advice for each commercial availability review under one investigation number. In addition, the Commission will post a notification letter announcing the initiation of each review on its Internet site (*http://www.usitc.gov*) and send the notification letter to a list of interested parties who wish to be automatically notified about any requests for which the Commission initiates analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466, *jackie.jones@usitc.gov*) or Heidi Colby-Oizumi (202–205–3391; *heidi.colby@usitc.gov*). The notification letter will specify the article(s) under consideration, the deadline for submission of public comments on the proposed preferential treatment, and the name, telephone number, and Internet e-mail address of a staff contact for additional information. The Commission has a special area on its Internet site (*http://www.usitc.gov/ind_econ_ana/research_ana/pres_cong/332/short_supply/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis. CITA publishes a summary of each request from interested parties in the **Federal Register** and posts them on its Internet site (U.S. Department of Commerce, Office of Textiles and Apparel, at *http://otexa.ita.doc.gov/fr.htm*).

The Commission will submit its reports to the USTR not later than the 42nd day after receiving a request for advice. The Commission will issue a public version of each report as soon as possible thereafter, with any confidential business information deleted.

Written Submissions: Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested parties will be invited to submit written statements concerning the matters to be addressed by the Commission in this investigation. The Commission is particularly interested in receiving input from the private sector on the likely effect of any proposed preferential treatment on affected segments of the U.S. textile and apparel industries, their workers, and consumers. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), except that interested parties need file only a signed original (or copy designated as an original) and three (3) copies of each document. In the event that confidential treatment of the document is requested, at least two (2) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov).*

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the Commission's Rules (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the CBI be clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The public record for this investigation may be viewed on the Commission's electronic docket (EFIS) at *http://edis.usitc.gov.* Hearing impaired individuals are advised that information can be obtained by contacting our TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Caribbean, African, Andean, tariffs, imports, yarn, fabric, and apparel.

Issued: January 24, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1534 Filed 1–25–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–384 and 731–TA–806–808 (Review)]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

EFFECTIVE DATE: January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202–205–3185) or Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective September 1, 2004, the Commission established a schedule for the conduct of the subject reviews (69 FR 54701, September 9, 2004). As a result of a conflict, however, the Commission is revising its schedule; the Commission's hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 2, 2005. The Commission's original schedule is otherwise unchanged. No party has objected to the Commission's schedule, as revised.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 21, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1414 Filed 1–25–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the Clean Water Act (''CWA'') and the Oil Pollution Act of 1990 (''OPA'')

Notice is hereby given that on January 13, 2005, a proposed Consent Decree in *United States* v. *Chevron U.S.A. Inc.*, Civil Action No. 1:05CV0021, was lodged with the United States District Court for the Eastern District of Texas.

In this action the United States and the State of Texas (''State'') sought natural resource damages pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the Clean Water Act (''CWA''), and the Oil Pollution Act of 1990 (''OPA'') and the regulations promulgated thereunder. The Chevron facility is located in Port Authur, Jefferson County, Texas.

Under the Consent Decree, Chevron U.S.A. Inc., Chevron Environmental Management company, and Chevron Phillips Chemical Company, LP will construct and plan an 85-acre estuarine marsh and a 30-acre coastal wet prairie and will construct some water control structures near Port Arthur, Texas. The companies will pay approximately $150,000 in past assessment costs incurred by the federal trustees, additional future costs that the federal trustees expect to incur, and costs incurred by the State trustees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Chevron U.S.A. Inc.*, D.J. Ref. No. 90–11–2–07542/1.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http:/www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a complete copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $28.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy of the Consent Decree, exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $13.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 05–1446 Filed 1–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on January 5, 2005, a proposed consent decree in *United States* v. *N.P. Industrial Center et al.*, Civil Action No. 00–CV–5119, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Compensation Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, in connection with the N.P. Industrial Center/United Knitting Machine Company property at the North Penn Area Six Superfund Site (''Site''), which consists of a contaminated groundwater plume and a number of separate parcels of property within and adjacent to the Borough of Lansdale, Montgomery County, Pennsylvania. The proposed consent decree will resolve the United States' claims against N.P. Industrial Center, Inc. and United Knitting Machine Company, Inc. (''Settling Defendants'') in connection with the N.P. Industrial Center/United Knitting Machine Company property at the Site. Under the terms of the proposed consent decree, Settling Defendants will make a cash payment to the United States of $35,000.00 plus interest to address their liability for past response costs incurred by the United States at Settling Defendants' property and will receive a covenant not to sue by the United States for past response costs under section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources

Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *N.P. Industrial Center et al.*, D.J. Ref. 90–11–2–06024/8.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library. PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–1445 Filed 1–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 3, 2005, an electronic version of a proposed consent decree was lodged in *United States* v. *Reichhold Limited,* et al., No. 5:03–CV–0077–3 (CAR) (M.D. Ga.). The consent decree settles the United States claims against Reichold Limited, Reichhold, Inc; Canadyne Corporation, and Canadyne-Georgia Corporation under Sections 106 and 107 the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607, in conneciton with the Woolfolk Chemical Superfund Site in Fort Valley, Georgia (the ''Site''). Under the proposed consent decree Reichhold Limited, Reichhold, Inc; Canadyne Corporation, and Canadyne-Georgia Corporation will pay $5 million in four annual installments of $1.25 million each, plus interest from the first payment date. The funds will be placed into a Superfund special account for the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Reichhold Limited,* et al., No. 5:03–CV–0077–3 (CAR) (M.D. Ga.) and DOJ #90–11–3–07282.

The consent decree may be examined at the Office of the United States Attorney for the Middle District of Georgia, 433 Cherry St., Macon, Georgia 31202. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7511, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–1444 Filed 1–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *U.S. Energy Partners, LLC,* Civil Action No. 05–1011–JTM, was lodged on January 12, 2005, with the United States District Court for the District of Kansas. This consent decree requires the defendants to pay a civil penalty of $30,000 and to perform injunctive relief in the form of installation of control technology to address Clean Air Act violations for the failure to obtain permits and install best achievable control technology (BACT) as required by the regulations for the Prevention of Significant Deterioration (PSD) at the defendant's ethanol plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *U.S. Energy Partners, LLC,* DOJ Ref. 90–5–2–1–08117.

The proposed consent decree may be examined at the Office of the United States Attorney, 1200 Epic Center, 301 North Main Street, Wichita, Kansas 67212, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the comment period, the consent decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decree also may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $12.25 for *United States* v. *U.S. Energy Partners, LLC,* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 05–1443 Filed 1–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,187]

AT&T Call Center; Charleston, West Virginia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 8, 2004 in response to a petition filed a petition filed by the Communications Workers of America on behalf of workers of AT&T Call Center, Charleston, West Virginia.

This petition is a copy of petition number TA–W–56,094. Since this petition (TA–W–56,187) was initiated in error, further investigation in this case would serve no purpose and the petition has been terminated.

Signed at Washington, DC, this 20th day of December 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–267 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,518]

BASF Corporation, Freeport, TX; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of October 15, 2004, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The negative determination for the workers of BASF Corporation, Freeport, Texas was signed on October 4, 2004, and the Department's notice of determination was published in the **Federal Register** on October 26, 2004 (69 FR 62461).

The initial investigation found that workers are separately identifiable by product line (polycaprolactum, oxo, diols, and acrylic monomers), that polycaprolactum, oxo and diol production increased during the relevant period, and that the subject company neither increased imports of acrylic monomers during the relevant period nor shifted acrylic monomer production abroad.

In the request for reconsideration, the petitioner alleged that the subject firm has shifted acrylic monomer production to China.

The Department has carefully reviewed the petitioner's request for reconsideration and previously submitted documents, and has determined that the petitioner has provided additional information and that the subject worker group was erroneously categorized. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 12th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–269 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,207]

Beverage-Air Abbeville County Factory; Honea Path, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 13, 2004 in response to a petition filed by a company official on behalf of workers at Beverage-Air, Abbeville County Factory, Honea Path, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 14th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–275 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,361]

The Boeing Company, Long Beach Division, Long Beach, California; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 14, 2004, a representative of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 148, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 2, 2004, and published in the **Federal Register** on October 8, 2004 (69 FR 60425).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of The Boeing Company, Long Beach Division, Long Beach, California was denied because criterion (1) was not met. The subject facility did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974.

The petitioner alleges that the workers of the 717 commercial aircraft program are separately identifiable from the rest of the workforce at the subject facility, and that there have been significant declines in employment within the 717 program.

A company official was contacted in regards to these allegations. The company official confirmed that the workers of the 717 commercial aircraft program are separately identifiable from the rest of the workforce at the subject facility, and provided employment figures for the 717 commercial aircraft program at the subject facility for end of year 2002, end of year 2003, and mid-December 2004.

Employment figures for the 717 commercial aircraft program at the subject facility showed an increase in employment from 2002 to 2003. Furthermore, although there was a slight employment decline within the 717 program at the subject facility from 2003 to December 2004, the subject division did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that total or partial separations, or both, in a firm or appropriate subdivision thereof, are the equivalent to a total unemployment of five percent (5 percent) of the workers or 50 workers, whichever is less. Separations by the subject facility, and by the 717 commercial aircraft division within the subject facility, did not meet this threshold level.

The petitioner also provided information showing employment declines within the Boeing commercial aircraft program nationwide and in California, but not specifically at the subject facility. When assessing eligibility for TAA, the Department

makes its determinations based on the requirements as outlined in section 222 of the Trade Act. In particular, the Department considers the relevant employment data for the facility where the petitioning worker group was employed. As employment levels at the subject facility did not decline significantly in the relevant period, criteria (I.A.) of Section (a)(2)(A) has not been met.

Additionally, the petitioner included information indicating that Boeing had lost a significant portion of its market share to the European Airbus Consortium. Although the Department would normally consider such information, since the subject division did not experience a significant decline in employment, it does not affect the outcome of this investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–260 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,114]

Bourns Microelectronics Modules, Inc. Formerly Known as Microelectronics Modules Corporation a Susidiary of Bourns Inc., New Berlin, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 1, 2004 in response to a petition filed on behalf of workers at Bourns Microelectronic Modules Inc., formerly known as Microelectronics Modules Corporation, a subsidiary of Bourns Inc., New Berlin, Wisconsin.

The petitioning group of workers is covered by an earlier petition (TA–W–42,217) which expired on December 6, 2004. Since the firm has ceased production and all workers were covered under that certification, there is no basis for issuing a new certification. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–263 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,125]

Caledonia Two, Formerly South Carolina Tees, Andrews, South Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 3, 2004 in response to a petition filed on behalf of workers of Caledonia Two, formerly South Carolina Tees, Andrews, South Carolina.

The petition was filed more than one year after the subject firm was closed. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–264 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,578]

Celestica, Repair Subdivision, Little Rock, AR; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 29, 2004, the International Brotherhood of Electrical Workers, Local 2022, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The negative determination applicable to workers of Celestica, Repair Subdivision, Little Rock, Arkansas was signed on October 15, 2004. The notice of determination was published in the **Federal Register** on November 12, 2004 (69 FR 65462).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition was filed on behalf of workers at Celestica, Repair Subdivision, Little Rock, Arkansas engaged in activities related to the repair of defective wireless phones, wired office phone handlers, phone switches, and other related equipment. The petition was denied because the workers did not produce an article within the meaning of section 222 of the Act.

In the request for reconsideration, the Union alleged that repair work should be considered remanufacturing work.

A company official was contacted to clarify the work performed at the Repair Subdivision and ascertain whether the repaired items were sold as remanufactured items. The official stated that the work done was repair and not remanufacturing, that defective items were sent to the repair facility by the end user pursuant to a warranty, that repaired items were returned directly to the end user, and that repaired items were not sold as remanufactured items.

Repair of products already purchased does not constitute production within the context of eligibility requirements for trade adjustment assistance.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 12th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–271 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,108]

Cosom Sporting Goods, Inc., Thorofare, NJ; Notice of Revised Determination on Reconsideration

On August 25, 2004, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 8, 2004 (69 FR 54318).

The Department initially denied Trade Adjustment Assistance (TAA) to workers of Cosom Sporting Goods, Inc., Thorofare, New Jersey due to the lack of increased imports and the absence of production shift abroad during the relevant period. The initial investigation found that the subject company was purchased by another company and that all production was shifted domestically.

During the reconsideration investigation, the Department requested additional information from the subject company and conducted a new customer survey. The survey revealed increased customer reliance upon imports during the relevant period.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that there were increased imports of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Cosom Sporting Goods, Inc., Thorofare, New Jersey who became totally or partially separated from employment on or after June 21, 2003, through two years from the date of certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 11th day of January, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–268 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W 56,173]

Durable Ralph, Inc.; Harrison, Arkansas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 16, 2004 in response to a petition filed by a State agency representative on behalf of workers at Durable Ralph, Inc., Harrison, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 21st day of December 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–266 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,882]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued amended certification regarding eligibility to apply for worker adjustment assistance and negative determination regarding eligibility to apply for alternative trade adjustment assistance on May 28, 2004, applicable to workers of Interface Fabrics Elkin, Inc., d/b/a Intek, a subsidiary of Interface, Inc., Aberdeen, North Carolina. The notice was published in the **Federal Register** on June 17, 2004 (69 FR 33942).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of furniture fabrics.

New information shows that Interface Fabrics Elkin, Inc., d/b/a Intek, a subsidiary of Interface, Inc., became known as Interface Fabrics South at Aberdeen, d/b/a Chatham, following a re-organization in 2003–2004. Workers separated from employment as the subject firm had their wages reported under a separated unemployment insurance (UI) tax account for Interface Fabrics South at Aberdeen, d/b/a Chatham.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Interface Fabrics Elkin, Inc., d/b/a Intek, a subsidiary of Interface, Inc., now known as Interface Fabrics South at Aberdeen, d/b/a Intek, d/b/a Intek Marketing, d/b/a Chatham who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,882 is hereby issued as follows:

''All workers of Interface Fabrics Elkin, Inc., d/b/a Intek, a subsidiary of Interface, Inc., now known as Interface Fabrics South at Aberdeen, d/b/a Intek, d/b/a Intek Marketing, d/b/a Chatham, Aberdeen, North Carolina, who became totally or partially separated from employment on or after May 5, 2003, through May 28, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

I further determine that all workers of Interface Fabrics Elkin, Inc., d/b/a Intek, a subsidiary of Interface, Inc., now known as Interface Fabrics South at Aberdeen, d/b/a Intek, d/b/a Intek Marketing, d/b/a Chatham, Aberdeen, North Carolina are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of December 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–259 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,210]

Monroe Salt Works, Monroe Maine; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 13, 2004 in response to a petition filed by a company official on behalf of workers at Monroe Salt Works, Monroe, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 28th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–262 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,034]

Mundy Maintenance Services and Operations, LLC Employed at UNIFI-Kinston, LLC Kinston, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 2004 in response to a petition filed by a company official on behalf of workers at Mundy Maintenance, Services and Operations, LLC, employed at Unifi-Kinston, LLC, Kinston, North Carolina.

The petitioning group of workers is covered by an active certification, (TA–W–55,977) which expires on December 9, 2006. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of December, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–261 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,331]

Peerless Lighting Corporation; Berkeley CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 12, 2005 in response to a petition filed on by a One Stop Representative on behalf of workers of Peerless Lighting, Berkeley, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of January 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–276 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,255]

Pinnacle Steel Processing, Inc., Including Leased Workers of Atwork Personnel Services, Inc. and Staffing Solutions, Jefferson City, TN; Notice of Revised Determination on Reconsideration

By letter dated October 11, 2004, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance (ATAA), applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on August 12, 2004, based on the finding that the petitioning group of workers does not qualify as secondarily affected workers as suppliers to a firm or subdivision primarily affected by increased imports or a shift in production abroad, nor did imports of slit steel coil contribute importantly to worker separations at the subject firm. The denial notice was published in the **Federal Register** on September 8, 2004 (69 FR 54321).

To support the request for reconsideration, the company official supplied additional major customers to supplement those that were surveyed during the initial investigation. Upon further review and survey, it was revealed that a major customer of the subject firm increased their purchases of imported slit steel coil significantly, while decreasing their purchases of domestically produced slit steel coil during the relevant period.

In addition, in order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Pinnacle Steel Processing, Inc., Jefferson City, Tennessee, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Pinnacle Steel Processing, Inc., Jefferson City, Tennessee including leased workers of AtWork Personnel Services, Inc., and Staffing Solutions, working at Pinnacle Steel Processing, Inc., Jefferson City, Tennessee, who became totally or partially separated from employment on or after July 13, 2003, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 14th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–270 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,704]

Quantegy, Incorporated; Opelika, AL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Quantegy, Incorporated, Opelika, Alabama. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–55,704; Quantegy, Incorporated, Opelika, Alabama (January 14, 2005).

Signed at Washington, DC this 18th day of January 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–272 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,120, TA–W–51,120A and TA–W–51,120B]

Sun Apparel of Texas, Armour Facility, Sun Warehouse Facility and Goodyear Distibution El Paso, TX; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor (Department) for further investigation in *Former Employees of Sun Apparel of Texas, et al* v. *U.S. Secretary of Labor,* No. 03–00625.

On March 11, 2003, a company official filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers at the subject firm. Supplemental Administrative Record (SAR) 50. While the petition was dated January 8, 2003, 29 CFR 90.2 provides, in the definition for ''Date of the petition,'' that, for TAA purposes, the date of the petition shall not be more than thirty days prior to the date of the filing. Thus, given the March 11, 2003 filing date, the petition date is considered to be February 11, 2003. In accordance with Section 223(b) of the Trade Act, no certification may apply to any worker whose last total or partial separation from the subject company occurred before February 11, 2002, one year prior to the date of the petition. Thus, any worker separated before February 11, 2003 falls outside the subject worker group.

In addition, 29 CFR 90.2 provides, in the definition for ''Increased imports,'' for comparison between domestic production 12 months prior to the date of petition and domestic production for the 12-month period starting two years before the date of the petition. Therefore, during the initial investigation, the Department requested and received sales, production, employment, import and shift of production information from the subject company for the period that the Department determined to be the relevant period: The two calendar years prior to the date of the petition (2001 and 2002). SAR 74. Information pertaining to 2001 is relevant only to the extent that it provides a basis for comparison with 2002 events. The Department determined that the petition covered three facilities in El Paso, Texas: Armour, Sun Warehouse, and Goodyear Distribution. Further, the Department found that the only production of an article (manufacture of jeans at the Armour Facility) had ceased by June 2000 and that the production activity had been shifted to Mexico.

On April 7, 2003, the Department issued a negative determination regarding eligibility to apply for TAA for the workers of the subject facilities. SAR 82. Workers at the Armour Facility generated patterns used for jeans production in Mexico. Workers at the Sun Warehouse Facility included laundry workers, trim workers and administrative staff. Workers at the Goodyear Distribution facility were forklift operators and shipping and receiving clerks. The negative determination was based on the investigation's finding that the Armour Facility did not import patterns or shift pattern production abroad during the investigatory time period (2001 and 2002) and that neither the Sun Warehouse Facility nor the Goodyear Distribution facility produced an article. The Notice of determination was published in the **Federal Register** on April 24, 2003 (68 FR 20177). SAR 87.

On May 22, 2003, the petitioners requested administrative reconsideration of the Department's negative determination. In the request, the petitioners stated that the workers at the Armour Facility produced samples and that a shift of sample production from the Armour Facility to Mexico was supported by a TAA certification that expired in September 2002. SAR 111.

On July 1, 2003, the Department issued a Notice of Determination Regarding Application for Reconsideration. SAR 130. The Notice of determination was published in the **Federal Register** on July 15, 2003 (68 FR 41847). SAR 137. The allegations about the production of samples had first appeared in the request for reconsideration. In response, the Department conducted a comprehensive inquiry of all operations, including sample production, at the subject facilities during the relevant period (2001 and 2002). SAR 123–129.

In the request for reconsideration, the petitioners alleged that sample production at the Armour Facility shifted to Mexico and inferred that samples were being imported from Mexico by the subject firm. The Department conducted an inquiry into this allegation and determined that sample production did not shift to Mexico and that the subject firm did not import samples from Mexico. SAR 123–129.

The reconsideration investigation also revealed that patterns were generated and transmitted ''primarily'' (See SAR 123) electronically and, therefore, did not constitute an article. SAR 123–129. Therefore, the Department determined that, with regard to the petitioner's allegations, production of an article did not occur at the Armour Facility. Accordingly, the Department reaffirmed the negative determination for that worker group.

During the reconsideration investigation, the Department also found that the functions at the Armour Facility's ''Print Shop'' constituted production, that label production had shifted to Mexico during the relevant period, and that the subject firm was relying exclusively on the labels produced at the affiliated facility in Mexico. SAR 123–129. Therefore, the Department determined that there were increased subject firm imports of labels and certified the separately-identifiable ''Print Shop'' workers.

The petitioners also stated that trim functions shifted to Mexico. According to the petitioners, the ''TRIM Department in the administrative area'' controlled entry and exit of inventory of sample production (See SAR 96) and involved ''checking that the orders for thread, zippers, patches, whatever accessories were needed for the production were distributed correctly here in El Paso as well as Mexico.'' SAR 121. In response to the allegations, the Department inquired into the matter (See SAR 123–129) and determined that trim work was a service incidental to internal quality control procedures and

did not constitute production of an article.

The Department also investigated petitioners' allegation that the subject firm produced articles other than samples and labels and found that only sample and label production took place during the relevant period. SAR 123.

The Department also inquired into the petitioners' assertion that the basis for certifications of previous petitions filed on behalf of the subject firm (TA–W–37,187 and TA–W–37,412) should be used to establish eligibility for the immediate TAA petition. The basis for TAA certification for the more recent of the two petitions (TA–W–37,412) was increased imports of articles like or directly competitive with laundered denim produced at the subject firm. The certification was issued on July 7, 2000. Because the shift to Mexico had been completed by June 2000, which was prior to the relevant period (See SAR 126), the basis for certification for the previous petition could not provide a basis for certification of the immediate petition.

On reconsideration, the Department determined that only sample production and label production at the ''Print Shop'' took place at the Armour Facility during the relevant period; that there was no shift of production or imports of samples during the relevant period; and that neither the Sun Warehouse Facility nor the Goodyear Distribution facility produced an article. Therefore, the Department reaffirmed the negative determinations for those worker groups. SAR 130.

On August 20, 2004, the USCIT ordered the Department to conduct a full and complete investigation into the petitioners' allegations and to determine subject workers' TAA eligibility.

During the remand investigation, the Department requested information from the petitioners (See SAR 163, 276), and even requested extensions of the deadline for filing its findings with the USCIT in order to fully elicit and consider the petitioners' input. SAR 246, 271.

The Department also requested the subject firm to provide extensive information regarding job functions, production operations, and organizational structure, as well as sales, production, employment and import figures for each subject facility for periods 2001, 2002, January through March 2002 and January through March 2003. For each subject facility, the firm completed a Business Confidential Data Request (BCDR) form which required sales, production, employment, imports, and production shift figures for specified time periods. The subject firm also provided detailed and comprehensive responses to an extensive questionnaire as well as clarification of their responses on specific matters during follow-up inquiries.

A careful review of the company's submissions reveals that the Armour Facility handled a wide variety of operations during the relevant period, including administrative and accounting functions (such as billing, payroll, and human resources), sample production, label production, pattern/marker design, and product development. SAR 249.

During 2002, production planning and raw material management functions were reduced due to the installation and use of a new computer system, Apparel Business Solutions (ABS), and some administrative functions, such as billing, transferred to the parent company's corporate headquarters in Bristol, Pennsylvania. SAR 249. In 2003, the ''Print Shop'' moved to Mexico and all production planning and raw material management functions were shifted to New York and/or California prior to its closure on March 3, 2003. SAR 232, 238, 249

While patterns and markers were created at Armour Facility, the design process did not constitute production of an article. The patterns and markers were custom-designed for specific uses and were created by using special computer programs. The patterns and markers were neither stored nor transmitted in a physical medium, but existed in an electronic form (such as a file on a computer server or an electronic mail); were electronically manipulated; and were sent exclusively via electronic mail. SAR 124, 127, 213, 214, 215. Therefore, pattern and marker design were services and, thus, the Department does not consider these patterns and markers to be articles, for TAA purposes.

After the ''Print Shop'' operation shifted to Mexico, the only production activities remaining at the Armour Facility was sample production. SAR 274. According to the BCDR for the Armour Facility, sample production did not shift abroad. Rather, sample production shifted to California. SAR 216, 282.

An analysis of the BCDR for the Armour Facility shows that both subject company imports and subject company reliance upon imports declined during the relevant period. Subject company production decreased slightly in 2002 from 2001 levels while subject company imports decreased significantly in 2002 from 2001 levels.

Further, the remand investigation considered data for the first quarter of 2003. The Department found that the decline in imports during January through March 2003 from January through March 2002 levels was more than triple the decline in 2002 from 2001 levels. SAR 217. The decline in subject company production during January through March 2003 is attributable to the shift of production to California. SAR 236, 282. During the same time period, the decrease in subject company imports was even more significant than the decline in production. SAR 217. Further, since the product samples are used internally by the subject firm, rather than provided to customers, a customer survey was not conducted.

In addition, the remand investigation found that repair work was performed, infrequently, at the Armour Facility. SAR 273, 274. The Department has consistently maintained that repair work does not constitute production, since the activity merely returns an item to its original condition. Hence, repair is a service. In any event, the repair work was done at irregular intervals and at insignificant levels, making it irrelevant to the case at hand because it cannot be a basis for certification.

The Sun Warehouse Facility was the only warehouse until April 2000, when Goodyear Distribution facility opened. SAR 209. Both facilities perform shipping and handling activities (receiving, stocking, packing and labeling, billeting, loading, quality control, etc.) and administrative activities related to warehousing and distribution. SAR 209, 211. Because warehousing and repair do not constitute production, both the Sun Warehouse and the Goodyear Distribution facilities had no sales, production, imports, and shift figures to report in their BCDRs. SAR 222, 227. Again, it is irrelevant that repair work was occasionally performed at the warehouses (See SAR 210) or outsourced to another local company (See SAR 274) because repair work is a service. Sun Warehouse Facility closed on March 31, 2003 and the Goodyear Distribution facility closed on August 18, 2003. SAR 196.

During the remand investigation, the Department repeatedly requested information from the petitioners. In response, the petitioners made two substantive submissions. First, in an October 1, 2004 letter, the petitioners stated that workers traveled to Mexico to provide training to the workers there; that repair work shifted to Mexico; and that marker and sample production are shifting to Mexico. SAR 247. Second, in

an affidavit dated November 24, 2004, a petitioner stated that she was separated from the subject company on February 3, 2002; that she worked in the sample and trim departments; that workers were sent to train workers in Mexico; that workers came from Mexico for training from 2000 through 2002; and that production equipment moved to Mexico. SAR 280.

Although the October 1, 2004 letter did not provide dates of the alleged activities and the November 24, 2004 affidavit was provided by a worker who is not, in fact, a member of the subject worker group (she was separated prior to February 11, 2002), the Department nonetheless inquired into whether any of the alleged actions took place during the relevant period in case they could constitute a basis for TAA certification.

According to the company's submissions, workers in Mexico were trained in preparation for the shift of the ''Print Shop'' label production, trained to use the new ABS computer system to improve production operations, and trained to design patterns and markers. SAR 212, 232. As previously stated, the Department considers the design of patterns and markers to be service work, not the production of an article, so any shift of such design work would be irrelevant. Further, a marker design facility was not created in Mexico until March 2004, well after the relevant period. SAR 242.

As directed, the Department also investigated whether the subject workers could be certified as either service workers or secondarily-impacted workers and determined that there was no activity at the subject facilities that could constitute a basis for certification under either category.

A careful review of the company's submissions shows that, during the relevant period, the El Paso, Texas facilities did not support a domestic production facility negatively-impacted by increased imports or a shift of production abroad and, therefore, do not qualify as a service company. Further, since none of the three El Paso, Texas facilities supplied components to or assemble and/or finish products for an affiliated domestic production facility negatively-impacted by increased imports or a shift of production abroad during the relevant period, the petitioners do not qualify as a secondarily-affected worker group. Rather, the three El Paso, Texas facilities supported a production facility located in Mexico. SAR 237, 274.

In summary, the remand investigation has enabled the Department to determine comprehensively that (1) patterns and markers were generated and transmitted electronically; (2) production of samples was shifted from the Armour Facility to California, not to Mexico; (3) there has been no importation of samples; (4) samples have been produced for internal use only and have no impact on imports; and (5) there has been no production of jeans by the subject facilities since 2000 (prior to the relevant period).

Conclusion

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Sun Apparel of Texas, Inc., Armour Facility, El Paso, Texas (TA–W–51,120), Sun Warehouse Facility, El Paso, Texas (TA–W–51,120A), and Goodyear Distribution, El Paso, Texas (TA–W–51,120B).

Signed at Washington, DC this 16th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–258 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,002]

Taisho Electric Corporation of America; El Paso, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Taisho Electric Corporation of America, El Paso, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,002; Taisho Electric Corporation of America, El Paso, Texas (January 14, 2005).

Signed at Washington, DC this 18th day of January 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–274 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,126]

Teleflex Automotive, Inc., Waterbury, Connecticut; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 3, 2004, in response to a worker petition filed by a State Government representative on behalf of workers at Teleflex Automotive, Inc., Waterbury, Connecticut.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet the threshold of employment. Consequently the investigation has been terminated.

Signed at Washington, DC, this 16th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–265 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,996]

Union Wadding Company; Pawtucket, RI; Notice of Revised Determination of Alternative Trade Adjustment Assistance

By letter dated December 29, 2004, a company official, requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification for Trade Adjustment Assistance was signed on December 16, 2004. The Notice of determination will soon be published in the **Federal Register**.

The initial investigation determined that subject worker group possess skills that are easily transferable.

The petitioner provided new information to show that the workers possess skills that are not easily transferable.

At least five percent of the workforce at the subject firm is at least fifty years of age. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Union Wadding Company, Pawtucket, Rhode Island, who became totally or partially separated from employment on or after November 9, 2003 through December 16, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 12th day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–273 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Current Population Survey (CPS) Volunteer Supplement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section of this notice on or before March 28, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The September 2005 CPS Volunteer Supplement will be conducted at the request of the Corporation for National and Community Service, and USA Freedom Corps. The Volunteer Supplement will provide information on the total number of individuals in the U.S. involved in unpaid volunteer activities, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteerism, activities in which volunteers participate, and reasons why former volunteers no longer do volunteer work.

Because the Volunteer Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the Supplement. Comparisons of volunteer activities will be possible across characteristics such as sex, race, age, and educational attainment of the respondent. It is intended that the Supplement will be conducted annually, if resources permit, in order to gauge changes in volunteerism.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS Volunteer Supplement.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: CPS Volunteer Supplement.

OMB Number: 1220–0176.

Affected Public: Households.

Total Respondents: 58,000.

Frequency: Annually.

Total Responses: 112,000

Average Time Per Response: 4 minutes.

Estimated Total Burden Hours: 7,467 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 12th day of January, 2005.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05–1379 Filed 1–25–05; 8:45 am]

BILLING CODE 4510–24–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2005–2 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Copyright Office of the Library of Congress is requesting comment as to whether the 2005 cable statutory license rate adjustment proceeding should take place under the auspices of the Copyright Arbitration Royalty Panel (''CARP'') system or the new Copyright Royalty Judge (''CRJ'') system.

DATES: Comments should be received by the Copyright Office no later than February 16, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment should be brought to Room LM–401 of the James Madison Memorial Building and the envelope should be addressed as follows: Office

of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE, Washington, DC 20559–6000 between 8:30 a.m. and 5p.m. If delivered by a commercial carrier, an original and five copies of a comment must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel/ CARP, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Associate General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 111 of title 17 of the United States Code creates a statutory license for cable systems that retransmit to their subscribers over–the–air broadcast signals. Royalty fees for this license are calculated as percentages of a cable system's gross receipts received from subscribers for receipt of broadcast signals. A cable system's individual gross receipts determine the applicable percentages. These percentages, and the gross receipts limitations, are published in 37 CFR part 256 and are subject to adjustment at five–year intervals. 17 U.S.C. 801(b)(2)(A) & (D) (2000). This is a window year for such an adjustment.

On January 10, 2005, the Copyright Office received a joint petition from representatives of copyright owners of sports programming (''Joint Sports Claimants'') and motion pictures and syndicated television series (''Program Suppliers'') requesting commencement of a cable rate adjustment proceeding. See http://www.copyright.gov/carp/cable–rate–petition.pdf. As part of the joint petition, Joint Sports Claimants and Program Suppliers request that their ''petition and any resulting proceeding be handled pursuant to existing CARP procedures, rather than under the new provisions established by the Copyright Royalty and Distribution Reform Act of 2004 ('CRDRA').'' Joint petition at 2. They assert that their request is consistent with the CRDRA, Pub. L. 108–419, which does not take effect until May 30, 2005, and note that the CRDRA does not contain a provision for a termination of proceedings that addresses petitions filed between November 30, 2004, and May 30, 2005. Furthermore, Joint Sports Claimants and Program Suppliers submit that a CARP proceeding will resolve the 2005 cable rate adjustment more expeditiously than the CRJs which, in their view, could take more than two years to finalize. *Id.* at 3.

The Copyright Office seeks public comment as to whether it is appropriate and/or required that the 2005 cable rate adjustment be resolved through the CARP process set forward in chapter 8 of the Copyright Act prior to passage of the CRDRA, or whether the joint petition filed by the Joint Sports Claimants and the Program Suppliers should be terminated and transferred to the CRJs.

Dated: January 21, 2005

Marybeth Peters,

Register of Copyrights.

[FR Doc. 05–1436 Filed 1–25–05; 8:45 am]

BILLING CODE 1410–33–S

LIBRARY OF CONGRESS

Copyright Office

Orphan Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office seeks to examine the issues raised by ''orphan works,'' *i.e.*, copyrighted works whose owners are difficult or even impossible to locate. Concerns have been raised that the uncertainty surrounding ownership of such works might needlessly discourage subsequent creators and users from incorporating such works in new creative efforts or making such works available to the public. This notice requests written comments from all interested parties. Specifically, the Office is seeking comments on whether there are compelling concerns raised by orphan works that merit a legislative, regulatory or other solution, and what type of solution could effectively address these concerns without conflicting with the legitimate interests of authors and right holders.

DATES: Written comments must be received in the Copyright Office on or before 5 p.m. EST on March 25, 2005. Interested parties may submit written reply comments in direct response to the written comments on or before 5 p.m. on May 9, 2005.

ADDRESSES: All submissions should be addressed to Jule L. Sigall, Associate Register for Policy & International Affairs. Comments may be sent by regular mail or delivered by hand, or sent by electronic mail to the e-mail address ''*orphanworks@loc.gov*'' (see file formats and information requirements under supplemental information below). Those sent by regular mail should be addressed to the U.S. Copyright Office, Copyright GC/ I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Submissions delivered by hand should be brought to the Public Information Office, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Mary Rasenberger, Policy Advisor for Special Programs, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone (202) 707–8350; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

File Formats and Required Information

1. If by electronic mail: Send to ''*orphanworks@loc.gov*'' a message containing the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address. The message should also identify the document clearly as either a comment or reply comment. The document itself must be sent as a MIME attachment, and must be in a single file in either: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word 2000 or earlier; (3) WordPerfect 8.0 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

2. If by regular mail or hand delivery: Send, to the appropriate address listed above, two copies of the comment, each on a 3.5-inch write-protected diskette, labeled with the name of the person making the submission and, if applicable, his or her title and organization. Either the document itself or a cover letter must also include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing

address, telephone number, telefax number (if any) and e-mail address (if any). The document itself must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word 2000 or earlier; (3) WordPerfect Version 8.0 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

3. If by print only: Anyone who is unable to submit a comment in electronic form should submit an original and two paper copies by hand or by mail to the appropriate address listed above. It may not be feasible for the Copyright Office to place these comments on the Office's Web site.

Background

The Copyright Act of 1976 made it substantially easier for an author to obtain and maintain copyright in his or her creative works. Today, copyright subsists the moment an original work of authorship is fixed in a tangible form—it need not be registered with the Copyright Office or published with notice to obtain protection. While registration of claims to copyright with the Copyright Office is encouraged and provides important benefits to copyright holders, it is not required as a condition to copyright protection. Under the 1909 Act, renewal registration was required to maintain protection beyond an initial 28-year term. Failure to register the renewal during the last year of the first term resulted in complete loss of protection. The 1976 Act removed the renewal requirement going forward, but kept it for works copyrighted before 1978. It was not until 1992 that the renewal requirement was abolished altogether. These changes, as well as other changes in the 1976 Act and in the Berne Convention Implementation Act of 1988, were important steps toward harmonizing U.S. copyright law with international treaties. Specifically, the Berne Convention and other treaties dealing with copyright that have followed forbid the imposition of formalities as a condition to copyright, principally on the grounds that failure to comply with formalities can serve as a trap for the unwary, resulting in the inadvertent loss of copyright.[1]

Concerns have been raised, however, as to whether current copyright law imposes inappropriate burdens on users, including subsequent creators, of works for which the copyright owner cannot be located (hereinafter referred to as ''orphan'' works). The issue is whether orphan works are being needlessly removed from public access and their dissemination inhibited. If no one claims the copyright in a work, it appears likely that the public benefit of having access to the work would outweigh whatever copyright interest there might be. Such concerns were raised in connection with the adoption of the life plus 50 copyright term with the 1976 Act and the 20-year term extension enacted with the Sonny Bono Copyright Term Extension Act of 1998.

The Copyright Office has long shared these concerns about orphan works and has considered the issue to be worthy of further study. On January 5, Senators Orrin Hatch and Patrick Leahy of the Senate Judiciary Committee asked the Register of Copyrights to study this issue and to report to the Senate Judiciary Committee by the end of the year. Also in January, Reps. Lamar Smith and Howard Berman, the chairman and ranking member of the House Judiciary Committee's Subcommittee on Courts, the Internet and Intellectual Property, sent letters to the Register supporting this effort. The Office is gratified that Congress has shown an interest in this important issue and is pleased to assist Congress in its efforts to learn more about the problem and to consider appropriate solutions.

Prior to the 1976 Act, the term of protection was limited to 28 years if the copyright was not renewed. Under this system, if the copyright owner was no longer interested in exploiting the work, or a corporate owner no longer existed, or, in the case of individual copyright owners, there were no interested heirs to claim the copyright, then the work entered the public domain. Of course, it also meant that some copyrights were unintentionally allowed to enter the public domain, for instance, where the claimant was unaware that renewal had to occur within the one year window at the end of the first term or that the copyright was up for renewal. The legislative history to the 1976 Act reflects Congress' recognition of the concern raised by some that eliminating renewal requirements would take a large number of works out of the public domain and that for a number of those older works it might be difficult or impossible to identify the copyright owner in order to obtain permissions. Congress nevertheless determined that the renewal system should be discarded, in part, because of the ''inadvertent and unjust loss of copyright'' it in some cases caused.[2] More recently, in the mid-1990s, Congress heard concerns that the Copyright Term Extension Act would exacerbate problems in film preservation by maintaining copyright protection for older motion pictures for which the copyright owner is difficult to identify.[3] Also, in our study on Digital Distance Education published in 1999, the Copyright Office identified several ''problems with licensing'' that educators asserted in attempting to use copyrighted materials in digital formats, including that ''it can be time-consuming, difficult or even impossible to locate the copyright owner or owners.''[4]

A situation often described is one where a creator seeks to incorporate an older work into a new work (*e.g.*, old photos, footage or recordings) and is willing to seek permission, but is not able to identify or locate the copyright owner(s) in order to seek permission. While in such circumstances the user might be reasonably confident that the risk of an infringement claim against this use is unlikely, under the current system the copyright in the work is still valid and enforceable, and the risk cannot be completely eliminated. Moreover, even where the user only copies portions of the work in a manner that would not likely be deemed infringing under the doctrine of fair use, it is asserted by some that the fair use defense is often too unpredictable as a general matter to remove the uncertainty in the user's mind.

Some have claimed that many potential users of orphan works, namely individuals and small entities, may not have access to legal advice on these issues and cannot fully assess risk themselves. Moreover, even if they are able to determine with some certainty that there is little or no risk of losing a lawsuit, they may not be able to afford any risk of having to bear the cost of defending themselves in litigation.

[1] The Berne Convention article 5(2) ''no formalities'' requirement has been incorporated by reference into both the Agreement on Trade-Related Aspects of Intellectual Property Rights (''TRIPS''), and the WIPO Copyright Treaty (''WCT''). See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, art. 9.1, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round vol. 31, 33 I.L.M. 81, 87 (1994); WIPO Copyright Treaty, Apr. 12, 1997, art. 3, S. Treaty Doc. No. 105–17 (1997), 36 I.L.M. 65, 69 (1997). The WIPO Performances and Phonograms Treaty (''WPPT'') contains an express ''no formalities'' provision without reference to the Berne Convention. See WIPO Performances and Phonograms Treaty, Apr. 12, 1997, art. 20, S. Treaty Doc. No. 105–17 (1997), 36 I.L.M. 76, 80 (1997).

[2] H.R. Rep. No. 94–1476, at 134 (1976).

[3] Letter from Larry Urbanski, Chairman, American Film Heritage Association, to Senator Strom Thurmond Opposing S. 505 (Mar. 31, 1997), available at *http://homepages.law.asu.edu/~dkarjala/Opposing CopyrightExtension/letters/AFH.html* (stating that as much as 75% of motion pictures from the 1920s are no longer clearly owned by anyone, and film preservationists as such cannot obtain the necessary permissions to preserve them).

[4] See Register of Copyrights, Report on Copyright and Digital Distance Education 41–43 (1999).

Given the high costs of litigation and the inability of most creators, scholars and small publishers to bear those costs, the result is that orphan works often are not used—even where there is no one who would object to the use.

This uncertainty created by copyright in orphan works has the potential to harm an important public policy behind copyright: To promote the dissemination of works by creating incentives for their creation and dissemination to the public. First, the economic incentive to create may be undermined by the imposition of additional costs on subsequent creators wishing to use material from existing works. Subsequent creators may be dissuaded from creating new works incorporating existing works for which the owner cannot be found because they cannot afford the risk of potential liability or even of litigation. Second, the public interest may be harmed when works cannot be made available to the public due to uncertainty over its copyright ownership and status, even when there is no longer any living person or legal entity claiming ownership of the copyright or the owner no longer has any objection to such use.

Empirical analysis of data on trends in copyright registrations and renewals over the last century suggests that a large number of works may fall into the category of orphan works.[5] Based on data of registrations of claims to copyright and their subsequent renewal under the 1909 Act, it appears that, overall, well less than half of all registered copyrighted works were renewed under the old copyright system. Because renewal was required to maintain protection of a work, this data suggests that, at least in many cases, there was insufficient interest a mere 28 years later to maintain copyright protection. The empirical data does not indicate why any particular works were not renewed, and no doubt, a certain portion of those works were not renewed due to inadvertence, mistake or ignorance on the part of the owner.[6] With respect to many of these works, however, particularly those owned by legal entities or other sophisticated copyright owners, it can be assumed that the work no longer had sufficient economic value to the copyright claimant to merit renewal. Libraries and scholars have argued that those works that have so little economic value that they fail to merit the small expense and effort of renewal may nevertheless have scholarly or educational value and should not be needlessly barred from such use.

Several alternatives for addressing these issues have been proposed and at least one country, Canada, has adopted legislation that specifically addresses orphan works. For background purposes, the Copyright Office describes some examples in this notice. It is stressed that the Office does not take a position as to the viability or desirability of any specific proposals or systems at this time, but seeks input as to the pros and cons of, and issues raised by, each, as well as proposals for other solutions and analysis thereof.

An example of a system that enables the use, in certain circumstances, of orphan works can be found in Canada's copyright law. The copyright law has a specific provision permitting anyone who seeks permission to make a copyright use of a work and cannot locate the copyright owner to petition the Canadian Copyright Board for a license.[7] The Copyright Board makes a determination as to whether sufficient effort has been made to locate the owner. If so, the Copyright Board may grant a license for the proposed use. It will set terms and fees for the proposed use of the work in its discretion and will hold collected fees in a fund from which the copyright owner, if he or she ever surfaces and makes a claim, may be paid. It should be noted that since the enactment of these provisions in 1990, the Copyright Board has issued only 125 such licenses. More information about the Canadian approach can be found on the Copyright Board Web site at: *http://www.cb-cda.gc.ca/unlocatable/index-e.html*.

The United Kingdom has a provision that affects a small subset of orphan works, namely those for which it is reasonable to assume the copyright has already expired. The law provides that there is no infringement where the copyright owner cannot be found by a reasonable inquiry and where the date the copyright expired is uncertain but it is reasonable to assume that the copyright has expired.[8]

Specific Questions

Through review of the submissions, the Copyright Office intends to determine the scope of the problem, evaluate appropriate next steps and create a record from which specific legislative proposals, if appropriate, could be considered and developed. To that end, this notice of inquiry sets forth several sets of questions, organized by issue, in an effort to begin gathering relevant information. Commenters do not need to respond to all questions, but are encouraged to respond to those as to which they have particular knowledge or information. Commenters may also frame additional questions or reframe any of the questions below.

1. Nature of the Problems Faced by Subsequent Creators and Users

What are the difficulties faced by creators or other users in obtaining rights or clearances in pre-existing works? What types of creators or users are encountering these difficulties and for what types of proposed uses? How often is identifying and locating the copyright owner a problem? What steps are usually taken to locate copyright owners? Are difficulties often encountered even after the copyright owner is identified? If so, this is an issue that the Copyright Office also invites you to address.

2. Nature of ''Orphan works'': Identification and Designation

How should an ''orphan work'' be defined? Should ''orphan works'' be identified on a case-by-case basis, looking at the circumstances surrounding each work that someone wishes to use and the attempts made to locate the copyright owner? Should a more formal system be established? For instance, it has been suggested that a register or other filing system be adopted whereby copyright owners could indicate continuing claims of ownership to the copyrights in their works.

On the other hand, the establishment of a filing system whereby the potential user is required to file an intent to use

[5] See William M. Landes and Richard A. Posner, Indefinitely Renewable Copyright 22–41 (John M. Olin Law & Economics Working Paper No. 154, 2d Series, 2002), available at *http://www.law.uchicago.edu/Lawecon/WkngPprs_151–175/154.wml-rap.copyright.new.pdf;* see also H.R. Rep. No. 94–1476, at 136 (1976) (''A statistical study of renewal registrations made by the Copyright Office in 1966 supports the generalization that most material which is considered to be of continuing or potential commercial value is renewed. Of the remainder, a certain proportion is of practically no value to anyone, but there are a large number of unrenewed works that have scholarly value to historians, architects and specialists in a variety of fields'').

[6] Indeed, one reason why the renewal system was replaced in recent copyright enactments was because it at times served to impose an excessive penalty on the unwary copyright owner. See H.R. Rep. No. 94–1476, at 134 (1976) (''One of the worst features of the present copyright law [the 1909 Copyright Act] is the provision for renewal of copyright * * * In a number of cases it is the cause of inadvertent and unjust loss of copyright'').

[7] Copyright Act, R.S.C., ch. C–42, § 77 (1985) (Can.).

[8] Copyright, Designs and Patents Act, 1988, c. 48, § 57 (Eng.); see also Copyright and Related Rights Act, No. 28, 2000 § 88 (Ir.); Laws of Hong Kong, Chapter 528: Copyright Ordinance, June 27, 1997 § 66, available at *http://www.justice.gov.hk/Home.htm*.

an unlocatable work has also been suggested. Would the Copyright Office or another organization administer and publish such filings? For instance, would the Copyright Office publish lists of these notices on a regular basis, similar to the lists of notices of intent to enforce restored copyrights filed with the Office? Questions arising from these different approaches are set forth in the next sections.

A. Case-by-Case Approach

The ''ad hoc'' or ''case-by-case'' approach, like that adopted in Canada, would set forth parameters for the level of search that would need to be undertaken in order to establish that a particular work is ''orphaned.'' Ensuing questions include the nature of those parameters. Should the focus be on whether the copyright holder is locatable? What efforts need be made to locate a copyright holder before it can be determined that the owner is not locatable? Would a search of registrations with the Copyright Office (or any other registries as described below in section B) and an attempt to reach the copyright owner identified on the work if any (plus any follow up) be sufficient? What other resources are commonly consulted to locate a copyright owner, and what resources should be consulted? Do resources like inheritance records, archives, directories of authors or artists need to be searched? Should there be an obligation to place an advertisement seeking the owner? Should factors such as the age of the work (which is discussed below), how obscure the work is or how long it has been since a publication occurred be taken into consideration?

B. Formal Approach

Another approach, like that used in the 1909 Act, would require registration or some sort of filing by copyright owners to maintain their copyrights past a certain age and to assist in locating copyright owners.[9] Would such a new registry or registries be created separate from the existing system of copyright registration (akin to the designated agent registry under section 512 of the Copyright Act) where copyright owners could identify themselves so that users could more easily find them? Should such a registry(ies) be privately owned or administered by a government agency like the U.S. Copyright Office? What would such a registry look like? What kind of information should be required from such a filing? Should the identification of a person to whom permission requests can be sent be required? What other information should be included? Also, how would the registry identify the ''works'' at issue, especially in light of the current multimedia age where works can take on many forms and spawn multiple derivative works? And, even more importantly, how could fraud and abuse of such a registry be avoided—*i.e.*, what is to prevent someone from fraudulently claiming works as his own?

Such a registration system could be optional as well as mandatory. Where, under a mandatory system, copyright owners could be required to make a filing in order to preserve their rights and/or prevent their works from being deemed ''orphan,'' under an optional registry, registration might provide additional benefits. Alternatively, under an optional system failure to register could carry certain penalties or limit remedies available to the right holder. If registration were mandatory, on the other hand, would failure to register create a rebuttable presumption that the work is ''orphaned,'' or would it conclusively be deemed ''orphaned'? (Questions as to the effect of a designation as an ''orphan work'' are set forth below in section 5). If optional, the registry might serve as just one factor in determining whether the copyright owner was locatable. How helpful would such a registration system be in determining whether a work was in fact ''orphaned'? Would the registry then qualify as just another place that a potential user should look to find the owner? If so, how practicable would such a system be? What incentives would a copyright owner have to use such a system? Should the owner be permitted to acquire any additional benefits from registering, such as additional damages or a penalty for willful use of a work? Does this tread too closely to the copyright registration system? What would the effect be on the user? For instance, if a user did not check the registry, would it prevent the user from claiming that the work was orphaned? Would there be sufficient incentive for copyright owners to register in a permissive system?

3. Nature of ''Orphan Works'': Age

Should a certain amount of time have elapsed since first publication or creation in order for a work to be eligible for ''orphaned'' status? If so, how much time? It might be helpful, in determining what an appropriate time period would be, to note some of the different benchmarks for term requirements that history and international conventions suggest. For example, under the 1909 Act, a work was to be renewed in the 28th year after publication. Current copyright law provides a presumption after the shorter of 95 years from publication or 120 years from creation that the work is in the public domain unless the Copyright Office's records indicate otherwise (and the Copyright Office issues a certified report to that effect).[10] Current copyright law provides another benchmark in the right to terminate grants of transfers or licenses after 35 (and up to 40) years after the grant or publication date.[11] Under existing international treaties, the term of protection for works measured other than by the life plus fifty term is generally fifty years from publication. The Copyright Term Extension Act of 1998 extended terms in the U.S. by 20 years, but at the same time recognized that certain uses should still be allowable in those last twenty years, namely uses by libraries and archives of certain works that are neither available at a reasonable price nor subject to normal commercial exploitation.[12] Would the last twenty years of the copyright term, or any of the other benchmarks or time periods noted above, be an appropriate measure for eligibility as an ''orphan work'? Should it be the same for all categories of works, or different depending on the nature of the work? What if the term for a particular work is unknown or uncertain? If the copyright owner is not known or cannot be found, there will certainly be instances where the date of creation or death of the author will be unknown. Can it be presumed at a certain point that a work has entered into the period in which it can be recognized as an orphan work?[13]

4. Nature of ''Orphan Works'': Publication Status

Should the status of ''orphan works'' only apply to published works, or are there reasons for applying it to

[9] *See also* H.R. 2601, 108th Cong. § 3 (2003).

[10] 17 U.S.C. § 302(e) (2003).

[11] § 203.

[12] § 108(h). Specifically, this provision provides that in the last twenty years of the term of any published work, a library or archive, including a nonprofit educational institution that functions as such, may make any copyright use of the work (other than create derivative works) for purposes of preservation, scholarship or research, if it has determined on the basis of reasonable investigation, that (i) the work is not subject to normal commercial exploitation, (ii) a copy cannot be obtained at a reasonable price, and (iii) the copyright owner or its agent has not provided notice with the Copyright Office that neither (i) or (ii) applies to the work.

[13] For instance, the U.K. law cited above provides a complete defense against liability if the owner cannot be found after reasonable inquiry and the date of expiration is uncertain but it's reasonable to presume that the copyright has expired. *See supra* note 8.

unpublished works as well? In Canada, for example, the system for unlocatable copyright owners only applies to published works. What are the reasons for applying it to unpublished works? If ''orphan work'' status would apply to unpublished works, how would such a system preserve the important right of first publication recognized by the Supreme Court in Harper & Row?[14] What are the negative consequences of applying such a system to unpublished works?

5. Effect of a Work Being Designated ''Orphaned'

However a work is identified and designated as ''orphaned,'' what would be the effects of such designation? Under systems for a mandatory, formal registry of maintained works, like the 1909 Act, the right to assert one's exclusive rights vis à vis others could similarly be lost, in whole or in part, if the work was not contained on the registry. Should this loss of rights apply only to the particular work at the time of use, or only to the particular use or user, or would it affect a permanent loss of rights as against all uses and users?

Other possibilities include imposing a limitation on remedies for owners whose works are ''orphaned''—without affecting the copyright itself. For instance, under the Canadian approach, the Copyright Board sets the license fees and other terms for the use and collects the payments on behalf of the copyright owner should one ever be identified. Under that approach, users could be confident that their use of the work would not subject them to the full range of remedies under the Copyright Act, but only an amount akin to a fee for use. At the same time, copyright owners would not be concerned about the inadvertent loss of rights from failure to pay the fee or take other requisite action. Domestically, the Copyright Clearance Initiative of the Glushko-Samuelson Intellectual Property Law Clinic of American University's Washington College of Law is currently developing a proposal that would limit the liability for users of orphan works and not result in any loss of copyright per se on the part of the copyright owner.[15] Under that proposal, only a recovery of a reasonable royalty would be allowed in infringement actions with respect to orphan works where good faith efforts have been made to locate the copyright owner. Are there other approaches that might be used? If a reasonable royalty approach is used, how should it be determined in any given case? To settle disputes as to the appropriate fee, is traditional Federal court litigation the right dispute resolution mechanism, or should an administrative agency be charged with resolving such disputes or should another alternative dispute resolution mechanism be adopted?

Are there other measures that could be applied in cases of orphan works? How would these, or any of the others described above, affect the incentives for authors of such works, particularly small copyright owners or individuals who might bear a greater burden than copyright owners with more resources?

6. International Implications

How would the proposed solutions comport with existing international obligations regarding copyright? For example, Article 5(2) of the Berne Convention generally prohibits formalities as a condition to the ''enjoyment and exercise'' of copyright. For any proposed solution, it must be asked whether it runs afoul of this provision. Would a system involving limitations on remedies be consistent with the enforcement provisions of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) or the prohibition against conditioning the enjoyment or exercise of copyright on compliance with formalities of TRIPS and other international agreements to which the U.S. is party? Would such proposals satisfy the three-step test set forth in TRIPS, Art. 13, requiring that all limitations and exceptions to the exclusive rights be confined to ''certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder'? Are there any other international issues raised by a proposed solution?

Dated: January 21, 2005.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 05–1434 Filed 1–25–05; 8:45 am]

BILLING CODE 1410–30–P

[14] *See* generally *Harper & Row, Publishers, Inc.* v. *Nation Enters.*, 471 U.S. 539, 550–555 (1985).

[15] Pursuant to that proposal, copyright law would be amended to limit liability for the use of works where the user has been unable to locate the copyright holder after making good faith efforts. Liability could be limited to a ''reasonable royalty'' or the like, or could be akin to the limitation of U.S. Federal Government liability to ''reasonable and entire compensation as damages * * *, including minimum statutory damages.'' 28 U.S.C. § 1498(b) (2003). Complex issues raised by that proposal include how to determine what constitutes ''good faith efforts'' to locate the copyright owner and how to determine and/ or settle what a reasonable royalty would be.

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 64114 and one comment was received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION: On November 3, 2004, we published in the **Federal Register** (69 FR 64113) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending January 3, 2005. We received one comment regarding this notice.

Comment: One commenter wrote about the value of the program.

Response: NSF believes that in order to continue funding, program evaluations are necessary.

Title of Collection: Evaluation of NSF Support for Undergraduate Research Opportunities (URO).

OMB Number: 3145–0121.

Type of Request: Intent to seek approval to continue an existing information collection for three years.

Abstract: Follow-up Research on Undergraduate Research Opportunities (URO–2).

Proposed Project: The National Science Foundation (NSF) manages a number of programs that provide meaningful research experiences for undergraduate students. This suite of programs includes: Research Experiences for Undergraduates (REU), both the Site and Supplement components; Research in Undergraduate Institutions (RUI); the undergraduate research components in several of NSF's large research centers programs, *e.g.*, Engineering Research Centers (ERC) Programs, Science and Technology Centers (STCs); and several institution-wide resources development programs in which undergraduate research experiences are often one component.

These Programs provide a wide range of US undergraduate students with opportunities to conduct hands-on research under the mentorship of graduate students, postdoctoral fellows, and faculty in various types of higher education institutions, including small liberal arts colleges, minority-serving institutions, research universities, as well as non-profit institutions in which science or engineering research is conducted.

The purpose of the proposed evaluation is to follow-up on undergraduate participants in research experiences supported by NSF who were surveyed in 2003. The 2003 survey collected information about why participants chose to participate in research, the nature of the research activities, effects of research on participants' knowledge, skills, confidence, awareness, and academic career interests and aspirations. The proposed survey will provide information about participants' current academic and employment status (in 2003, most of the respondents were in their senior year of college) and participants' current perceptions of the effects of their undergraduate research experiences on their career and academic decisions. The survey database will be linked to that of the 2003 survey to access differences on a number of dimensions, including NSF program, academic major, type of academic institution, and sex and race/ethnicity of the participant.

Use of the Information: NSF and others who design undergraduate research programs will be able to use the information to help design programs that meet the needs of different kinds of students in different kinds of settings.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Respondents: 2900.

Estimated Total Annual Burden on Respondents: 1450 hours—2900 respondents at 30 minutes each.

Frequency of response: One time.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond.

Dated: January 19, 2005

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–1385 Filed 1–25–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, LLC Point Beach Nuclear Plant, Units 1 and 2; Notice of Availability of the Draft Supplement 23 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Point Beach Nuclear Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of Facility Operating Licenses DPR–24 and DPR–27 for the Point Beach Nuclear Plant, Units 1 and 2 (PBNP), for an additional 20 years of operation. PBNP is located on the western shore of Lake Michigan in Two Rivers, Wisconsin, approximately 30 miles southeast of Green Bay, Wisconsin. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement to the GEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Lester Public Library, located at 1001 Adams Street, Two Rivers,Wisconsin 54241, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by April 13, 2005. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of

Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *PointBeachEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on March 3, 2005, at the Fox Hills Convention Center, 250 West Church Street in Mishicot, Wisconsin. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Ms. Stacey Imboden, by telephone at 1–800–368–5642, extension 2462, or by e-mail at *PointBeachEIS@nrc.gov* no later than March 1, 2005. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Imboden's attention no later than February 23, 2005, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Imboden, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Ms. Imboden may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 13th day of January, 2005.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 05–1353 Filed 1–25–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51055; File No. SR–Amex–2004–99]

Self Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 thereto Relating to the Listing and Trading of Contingent Principal Protected Notes Linked to the Performance of the Russell 2000

January 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 6, 2005, Amex amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex defined the term ''market disruption event'' for purposes of the proposed rule change and specified the market capitalization of the Russell 2000 Index as of January 5, 2005.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade contingent principal protected notes, the performance of which is linked to the Russell 2000 Index (''Russell 2000'' or ''Index''). The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the Russell 2000 that provide for contingent principal protection (the ''Contingent Principal Protected Notes'' or ''Notes'').[5] The Russell 2000 is determined, calculated, and maintained solely by Frank Russell. The Notes will provide for an uncapped participation in the positive performance of the Russell 2000 during their term while also reducing the risk exposure to the principal investment amount as long as

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[5] Lehman Brothers Holdings Inc. (''Lehman'') and Frank Russell Company (''Frank Russell'') have entered into a non-exclusive license agreement providing for the use of the Russell 2000 by Lehman and certain affiliates and subsidiaries in connection with certain securities including these Notes. Frank Russell is not responsible and will not participate in the issuance and creation of the Notes.

the Index does not at any time decline below a pre-established level to be determined at the time of issuance (''Threshold Level''). This Threshold Level will be a pre-determined percentage decline from the level of the Index at the close of the market on the date the Notes are priced for initial sale to the public (''Initial Index Level''). The Issuer expects that the Threshold Level will be approximately 70% of the Initial Index Level. A decline of the Index below the Threshold Level is referred to as a ''Contingent Event.''

The Contingent Principal Protected Notes will conform to the initial listing guidelines under Section 107A [6] and will be subject to the continued listing guidelines under Sections 1001–1003 [7] of the Company Guide. The Notes are senior non-convertible debt securities issued by Lehman. The Notes will have a term of at least one (1) but no more than ten (10) years. The original public offering price will be $1,000 per Note with a required minimum initial investment amount of $10,000.

The Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount as long as the Russell 2000 never experiences a Threshold Event. In the case of a positive Index return, the holder would receive the full principal investment amount of the Note plus the product of $1,000, the percentage change of the Russell 2000 during the term and the participation rate (expected to be between 105–115%). Accordingly, even if the Index declines but never drops below the Threshold Level, the holder will receive the principal investment amount of the Notes at maturity. If however, the Notes experience a Contingent Event during the term, the holder loses the ''principal protection,'' and will be entitled to receive a payment based on the percentage change of the Index, positive or negative. In this case, the Notes will not have a minimum principal investment amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, if the Index experiences a negative return and a Contingent Event, the Notes would be fully exposed to any decline in the level of the Russell 2000.[8] The Notes are not callable by Lehman or redeemable by the holder before maturity.[9]

The payment that a holder of or investor in a Note will be entitled to receive (the ''Redemption Amount'') will depend on the relation of the level of the Russell 2000 at the close of the market on the third business day (the ''Valuation Date'') before maturity of the Notes (the ''Final Index Level'') and the Initial Index Level.[10] In addition, whether the Notes retain ''principal protection'' or are fully exposed to the performance of the Index is determined by whether the Russell 2000 ever experiences a Contingent Event during the term of the Notes.

If the percentage change of the Index is positive, the Redemption Amount per Note will equal:

$$\$1000 + \left[\$1000 \times \left(\frac{\text{Final Index Level} - \text{Initial Index Level}}{\text{Initial Index Level}}\right)\right]^{11}$$

If the percentage change of the Index is zero or negative and the Index never experienced a Contingent Event, the Redemption Amount per Note will equal the principal investment amount of $1,000.

If the Index experiences a Contingent Event the Redemption Amount per Note will equal:

[6] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. *See* Section 107A. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million. Amex represents that Lehman meets these requirements. Telephone conference among Jeffrey Burns, Associate General Counsel, Amex and Beth Kleiman, Vice President Capital Markets, Amex, and Ira Brandriss, Assistant Director; Geoffrey Pemble, Special Counsel; and Mitra Mehr, Attorney, Division of Market Regulation, Commission, on January 6, 2005 (''Telephone Conference with Amex'').

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] A negative return of the Russell 2000, together with a Contingent Event, will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

[9] Telephone Conference with Amex.

[10] In the event that a market disruption event occurs on the Valuation Date, such date will be the next business day on which no market disruption event occurs. Telephone Conference with Amex. In Amendment No. 1, Amex submitted the following definition of ''market disruption event'' for purposes of the proposed rule change: ''The term 'market disruption' event, as defined in the prospectus [related to the Note], is (i) a material suspension or limitation imposed on trading relating to 20% or more of the component stocks of the Index on the primary market or related markets at any time during the one-hour period that ends at the close of trading on such day; (ii) a material suspension of or limitation imposed on trading in futures and options contracts relating to the Index or any successor index by the primary exchange on which futures or options are traded, at any time during the one-hour period that ends at the close of trading on such day; (iii) any event, other than an early closure, that disrupts or impairs the ability of market participants in general to effect transactions in, or obtain market values for the securities that comprise 20% or more of the Index or any successor index on the relevant exchanges of which those securities are traded, at any time during the one-hour period that ends at the close of trading on such day; (iv) any event, other than early closure, that disrupts or impairs the ability of market participants in general to effect transactions in, or obtain market values for, the futures or options contracts relating to the Index or any successor index on the primary exchange or quotation system on which those futures or options contracts are traded at any time during the one-hour period that ends at the close of trading on such day; and (v) the closure of the relevant exchanges on which the securities that comprise 20% or more of the Index or any successor index are traded or on which futures or options contracts relating to the Index or any successor index are traded prior to its scheduled closing time unless the earlier closure is announced by the relevant exchanges at least one hour prior to the actual closing of the regular trading session and submission deadline for orders for execution at the close.''

[11] Amex represents that this formula is equivalent to the formula that appears in the prospectus. Telephone Conference with Amex.

$$\$1000 + \left[\$1000 \times \left(\frac{\text{Final Index Level} - \text{Initial Index Level}}{\text{Initial Index Level}}\right) \times \text{Participation Rate}\right]$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Russell 2000. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity.[12] The Notes are designed for investors who want to participate or gain exposure to the Russell 2000 while partially limiting their investment risk and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and options linked to the performance of the Russell 2000.[13]

Description of the Index

The Index is a capitalization-weighted index maintained by Frank Russell.[14] It is designed to track the performance of 2,000 common stocks of corporations with small market capitalizations relative to other stocks in the U.S. equity market. The companies represented in the Index are domiciled in the U.S. and its territories and cover a wide range of industries. All 2,000 stocks underlying the Index are traded on the New York Stock Exchange, Inc. (''NYSE''), the Amex or the Nasdaq Stock Market (''Nasdaq'') and form a part of the Russell 3000 Index. The Russell 3000 Index is comprised of the 3,000 largest U.S. companies, based on market capitalization, and it represents approximately 98% of the U.S. equity market.

The Index measures the price performance of the shares of common stock of the smallest 2,000 companies included in the Russell 3000 Index, which represented approximately 8% of the total market capitalization of the Russell 3000 Index as of December 3, 2004.[15] The Index is designed to track the performance of the small capitalization segment of the U.S. equity market. The Index is defined, assembled, and calculated by Frank Russell without regard to the Notes.

Only companies domiciled in the U.S. and its territories are eligible for inclusion in the Index. Companies domiciled in other countries are excluded from the Index, even if their common stock shares are traded on U.S. markets. Preferred stock, convertible preferred stock, participating preferred stock, paired shares, warrants, and rights are also excluded. Trust receipts, royalty trusts, limited liability companies, OTC Bulletin Board and Pink Sheets' quoted stock, closed-end mutual funds, and limited partnerships that are traded on U.S. exchanges are also ineligible for inclusion in the Index. Real Estate Investment Trusts and Beneficial Trusts are eligible for inclusion, however. In general, only one class of shares of a company is allowed in the Russell 3000 Index, although exceptions to this general rule have been made where Frank Russell has determined that each class of shares acts independently. The primary criteria used to determine the initial list of securities eligible for the Russell 3000 Index is total market capitalization, which is defined as the price of the shares times the total number of shares outstanding.

Based on closing values on May 31 of each year, Frank Russell reconstitutes the composition of the Russell 3000 Index using the then existing market capitalizations of eligible companies to reflect changes in capitalization rankings and shares available. If a stock ceases to trade as a result of a merger or acquisition during the year, then the stock would be deleted from the Index immediately, but would not be replaced until the subsequent annual recapitalization. No interim replacements will be made. As of June 30 of each year, the Index is adjusted to reflect the reconstitution of the Russell 3000 Index for that year.

As of December 3, 2004, the market capitalization of the Index components ranged from a high of approximately $2.531 billion to a low of approximately $3.858 million. As of the same date, the Index's highest weighted component stock constituted approximately 0.2257% of the Index's market capitalization, and the top five component stocks constituted approximately 1.0080% of the Index's market capitalization. The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 1.07 million shares to a low of approximately 103,465 shares.

As a capitalization-weighted index, the Index reflects changes in the capitalization, or market value, of the component stocks relative to the capitalization on a base date. The current Index value is calculated by adding the market values of the Index's component stocks, which are derived by multiplying the price of each stock by the number of shares outstanding to arrive at the total market capitalization of the 2,000 stocks. The total market capitalization is then divided by a divisor, which represents the ''adjusted'' capitalization of the Index on the base date of December 31, 1986. To calculate the Index, last sale prices are used for exchange-traded and Nasdaq stocks. If a component stock is not open for trading, the most recently traded price for that security is used in calculating the Index. To provide continuity for the Index's value, the divisor is adjusted periodically to reflect certain events, including changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings, and other capitalization changes. As of December 3, 2004, the divisor was 1,735,296.

The Index value is updated and disseminated every 15 seconds throughout the trading day and is available from numerous vendors, independent of the issuer and Amex, such as Bloomberg and Reuters. The value of the Index on a delayed basis can be accessed by individual investors at *http://finance.yahoo.com.* The last sale information for the Notes is disseminated on a real time basis on Tape B and a variety of other sources.[16] In the event that the Index is no longer calculated and disseminated by an independent third-party source, the Exchange will delist the Notes.[17]

Because the Notes are issued in $1,000 denominations, the Amex's

[12] Telephone Conference with Amex.

[13] *See e.g.*, Securities Exchange Act Release Nos. 50724 (November 23, 2004), 69 FR 69655 (November 30, 2004)(SR–NASD–2004–132)(listing and trading of Accelerated Return Notes linked to the Russell 2000); 50710 (November 19, 2004), 69 FR 69435 (November 29, 2004)(SR–NASD–2004–157)(listing and trading of Leveraged Upside Securities linked to the Russell 2000); 49388 (March 10, 2004), 69 FR 12720 (March 17, 2004)(SR–CBOE–2003–151)(options on three Russell Indexes); 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002)(SR–NYSE–2002–28); 32694 (July 29, 1993), 58 FR 41814 (August 4, 1993)(SR–CBOE–93–16)(FLEX options on Russell 2000); 32693 (July 29, 1993), 58 FR 41817 (August 5, 1993) (SR–CBOE–93–15); and 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992)(SR–CBOE–92–02)(options on the Russell 2000).

[14] For additional information regarding the Index see *http: //www.russell.com.*

[15] As of January 5, 2005, the total market capitalization of the Index was $1.33 trillion. *See* Amendment No. 1.

[16] Telephone Conference with Amex.

[17] Telephone Conference with Amex.

existing debt floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[18] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[19] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Lehman will deliver a prospectus in connection with the initial sales of the Notes. The procedures for the delivery of a prospectus will be the same as Lehman's current procedure involving primary offerings.[20]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

Pursuant to the Securities Exchange Act Rule 10A–3, 17 CFR 240.10A–3 and Section 3 of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 stat. 745 (2002), Amex will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.[21]

[18] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[19] *See* Amex Rule 462 and Section 107B of the Company Guide.

[20] Telephone Conference with Amex.

[21] Telephone Conference with Amex.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act[22] in general, and furthers the objectives of Section 6(b)(5) of the Act[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2004–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–Amex–2004–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 2004–99 and should be submitted on or before February 16, 2005.

IV. Commission's Findings and Order Granting Approval of the Proposed Rule

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[24] The Commission notes that the proposal is similar to several approved instruments currently listed and traded on Amex.[25] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Securities Exchange Act Release Nos. 50850 (December 14, 2004), 2004 SEC Lexis 2953 (SR–Amex–2004–87) (approving the listing and trading of Contingent Principal Protected Notes linked to S&P 500); 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (SR–Amex–2004–68) (approving the listing and trading of Wachovia Contingent Principal Protected Notes on the S&P 500); 48486 (September 11, 2003); 68 FR 54758 (September 18, 2003) (SR–Amex–2003–74) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (SR–Amex–2004–48) (approving the listing and trading of Morgan Stanley PLUS Notes); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (SR–Amex–2003–62) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (SR–Amex–2003–45) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500).

facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[26]

The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, like the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. Amex represents that Lehman meets these requirements. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[27] The Commission also notes that the Notes will be registered under Section 12 of the Act.[28] By imposing the hybrid listing standards and the suitability, disclosure, and compliance requirements noted in the proposal above, the Commission believes Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

In approving the product, the Commission recognizes that the Index is a modified capitalization-weighted index of 2000 stocks traded on NYSE, Nasdaq and Amex. The Commission notes that the Index is broadly diversified and that the overwhelming majority of the stocks that comprise the Index are not inactively traded. Thus, the Commission believes that the listing and trading of the Notes should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. Moreover, all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as Lehman, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Lehman.[29]

Finally, the Commission notes that the value of the Index will be widely disseminated at least once every fifteen seconds throughout the trading day. The Exchange represents that the Index will be determined, calculated and maintained solely by Frank Russell.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[30] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[31] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change, as amended (SR–Amex–2004–99), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–278 Filed 1–25–05; 8:45 am]

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[26] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] *See* Company Guide Section 107A.

[28] 15 U.S.C. 781.

[29] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (SR–NASD–2001–73) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq–100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (SR–Amex–2001–40) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (SR–Amex–96–27) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[30] *See supra* note 24.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] *Id.*

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51058; File No. SR–Amex–2004–38]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 2, 3 and 4 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 by the American Stock Exchange LLC Relating to the Listing and Trading of the iShares® COMEX Gold Trust

January 19, 2005.

I. Introduction

On May 24, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under new Amex Rules 1200A *et seq.* iShares® COMEX Gold Trust Shares (''Gold Shares''). On November 9, 2004, Amex amended its proposal; however, the Exchange withdrew this amendment on November 17, 2004. On November 10, 2004 the Exchange submitted a second amendment.[3] On November 16, 2004, the Exchange submitted a third amendment.[4] On December 1, 2004, the Exchange submitted a fourth amendment.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 9, 2004.[6] The Commission received no comment letters regarding the proposed rule change. On January 7, 2005, the Exchange submitted a fifth amendment.[7] This notice and order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Amendment No. 2, dated November 10, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange revised the proposed rule text and corresponding description. Amendment No. 2 replaced Amex's original filing in its entirety.

[4] *See* Amendment No. 3, dated November 16, 2004 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposed clarifying changes to certain aspects of Amendment No. 2 and modified the proposed rule text.

[5] *See* Amendment No. 4, dated December 1, 2004 (''Amendment No. 4''). In Amendment No. 4, the Exchange provided additional description of the creation and redemption process for the Gold Trust shares and made clarifying changes to the proposed rule text. Amendment No. 4 replaced Amex's amended proposal in its entirety.

[6] *See* Securities Exchange Act Release No. 50792 (December 3, 2004), 69 FR 71446 (''Notice'').

[7] *See* Amendment No. 5, dated January 7, 2005 (''Amendment No. 5''). In Amendment No. 5, the Exchange proposed changes to Commentary .01 to Rule 1202A for the purpose of clarifying that the Exchange will submit separate rule filings under

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approves the Exchange's rule change, and Amendments 2, 3 and 4 thereto, solicits comment from interested persons on Amendment No. 5, and approves Amendment No. 5 on an accelerated basis.

II. Description of Proposal

The Amex proposes to add new Exchange Rules 1200A *et seq*. for the purpose of permitting the listing and trading of Trust Issued Receipts [8] based on commodity interests (''Commodity-Based Trust Shares''), and to amend Sections 140 and 141 of the Amex *Company Guide* regarding original and annual listing fees applicable to such shares. Amex Rule 1201A will permit the Exchange to list and trade Commodity-Based Trust Shares. Under the rule, for each series of Commodity-Based Trust Shares, the Exchange will submit for Commission review and approval a filing pursuant to Section 19(b) of the Act.[9] Proposed Amex Rule 1202A sets forth initial and continued listing and trading criteria for Commodity-Based Trust Shares.[10]

The Amex initially proposes to list iShares COMEX [11] Gold Trust (the ''Gold Trust'' or ''Trust'') shares that represent beneficial ownership interests in the net assets of a trust that holds gold bullion. As explained further herein, Gold Shares will be issued in baskets. Initially, each basket of 50,000 shares will correspond to 5,000 troy ounces of gold. Thus, each Gold Share will correspond to one-tenth of a troy ounce of gold.[12] The Gold Shares will conform to the initial and continued listing criteria under proposed Rule 1202A. The Gold Trust will be formed under a depositary trust agreement among Bank of New York (''BNY''), the Trustee; Barclays Global Investors, N.A. (''Barclays''), the Sponsor; all depositors; [13] and the holders of Gold Shares.[14]

In effect, purchasing Gold Shares will provide investors a new mechanism to participate in the gold market. The Trustee will not actively manage the gold held by the Trust. Information about the liquidity, depth, and pricing mechanisms of the international gold market, management and structure of the Trust, and description of the Gold Shares follows below.

A. Description of the Gold Market

The global trade in gold consists of over-the-counter (''OTC'') transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options on futures. In its filing with the Commission, the Exchange made the following representations regarding the worldwide gold market.[15]

1. The OTC Market

The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's buy and sell prices. The period of greatest liquidity in the gold market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in London, New York, and other centers coincides with futures and options trading on the COMEX.[16] This period lasts for approximately four (4) hours each New York business day morning.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association (''LBMA''), a trade association of participants in the London Bullion market.

The Exchange states that there are no authoritative published figures for overall world-wide volume in gold trading. There are certain published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.[17] The Exchange notes that the monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day. Through September 2004, the monthly average daily volume has ranged from a high of 17 million to a low of 12.4 million. The Exchange also notes that the COMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold futures and options contracts was 4.89 million (48,943 contracts) and 1.7 million (17,241 contracts) troy ounces per day, respectively. Through October 2004, the average daily volume for gold futures

section 19(b)(2) of the Act in connection with the listing and trading of each series of Commodity-Based Trust Shares. Further, in Amendment No. 5 the Exchange represented that (1) as provided in the Registration Statement to the Trust, the trustee will charge a transaction fee in connection with the redemption and/or creation of Baskets; (2) Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 Shares of the Trust to compose the initial Baskets; and (3) the Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares.

[8] A Trust Issued Receipt or ''TIR'' is defined in Exchange Rule 1200(b) as a security (a) that is issued by a trust that holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Under Amex Rule 1201, the Exchange may approve for listing and trading TIRs based on one or more securities. The Exchange defines a ''security'' or ''securities'' to include stocks, bonds, options, and other interests or instruments commonly known as securities. *See* Article I, section 3(j) of the Amex Constitution.

[9] 15 U.S.C. 78s(b). Because of the structure of the Gold Trust, representing an interest in underlying gold, the Exchange's existing listing and trading rules that permit the listing and trading of TIRs, pursuant to Rule 19b–4(e) under the Act, 17 CFR 240.19b–4(e), cannot be used to list this product.

[10] Proposed Rule 1202A for Commodity-Based Trust Shares tracks but is not identical to current Rule 1202 relating to TIRs. The initial listing standards set forth in Rule 1202(a) provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section ''Criteria for Initial and Continued Listing,'' the Exchange represents that the minimum number of Gold Shares outstanding at the time of trading will be 150,000. *See* Amendment No. 5, *supra* note 7.

[11] COMEX is a division of the New York Mercantile Exchange, Inc. (''NYMEX'') where gold futures contracts are traded.

[12] The amount of gold associated with each basket (and individual Gold Share) is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

[13] Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 Shares of the Trust to compose the initial Baskets. *See* Amendment No. 5, *supra* note 7.

[14] The Trust is not an investment company as defined in section 3(a) of the Investment Company Act of 1940 (the ''1940 Act'').

[15] For more information on the gold market and gold supply and demand, *see* Notice, *supra* note 6.

[16] The open outcry trading hours of the COMEX gold futures contract is from 8:20 a.m. to 1:30 p.m. New York time Monday through Friday. NYMEX ACCESS(®), an electronic trading system, is open for trading on COMEX gold futures contracts from 2 p.m. Monday afternoon until 8 a.m. Friday morning New York time; and from 7 p.m. Sunday night until Monday morning at 8 a.m. New York time. *See* Amendment No. 4, *supra* note 5, at note 4.

[17] Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm*. The three measures published by LBMA are: Volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

and options was 6.08 million (60,817 contracts) and 2.01 million (20,173 contracts), respectively.[18]

2. Futures Exchanges

The Exchange states that the most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange (''TOCOM'').[19] Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded.

The daily settlement price for COMEX gold futures contracts is publicly available on the NYMEX Web site at *http://www.nymex.com*.[20] The Exchange on its Web site at *http://www.amex.com* will include a hyperlink to the NYMEX Web site for the purpose of disclosing gold futures contract pricing. In addition, the Exchange represents that COMEX gold futures prices, options on futures quotes, and last sale information are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. The Exchange further represents that complete real-time data for COMEX gold futures and options is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site at *http://www.nymex.com.* The contract specifications for COMEX gold futures contracts are also available from the NYMEX at its Web site at *http://www.nymex.com,* as well as other financial informational sources.

3. Gold Market Regulation

There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur in some capacity. In the United Kingdom, responsibility for the regulation of financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (''FSA'') as provided by the Financial Services and Market Act of 2000 (''FSM Act''). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

The Exchange states that participants in the United States OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the United States, the Commodity Futures Trading Commission (''CFTC''), an independent government agency with the mandate to regulate commodity futures and options markets in the United States, regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets' prices.

B. Trust Management and Structure

The Exchange proposes to list and trade Gold Shares, which represent units of fractional undivided beneficial interest in and ownership of the Trust. The purpose of the Trust is to hold gold bullion.[21] The investment objective of the Trust is for the Gold Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Exchange states that the Trust is not a registered investment company under the 1940 Act and is not required to register under such Act. The Sponsor (Barclays), Trustee (BNY), and Custodian (The Bank of Nova Scotia) are not affiliated with one another or with the Exchange.

C. Trust Expenses and Management Fees

Generally, the assets of the Trust (*e.g.*, gold bullion) will be sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of an investor's Gold Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include (1) fees paid to the Sponsor, (2) fees paid to the Trustee, (3) fees paid to the Custodian, and (4) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and Amex listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value (''NAV'') of the Trust.

D. Description and Characteristics of the Gold Shares

1. Liquidity

The Exchange represents that a minimum of 150,000 Gold Shares will be outstanding at the start of trading.[22] The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of trust issues receipts, Portfolio Depository Receipts and Index Fund Shares.

While the Gold Shares will trade on the Amex until 4:15 p.m. New York time, liquidity in the OTC market for gold generally decreases after 1:30 p.m. New York time when daily trading at

[18] Information regarding average daily volume estimates by the COMEX can be found at *http://www.nymex.com/jsp/markets.md_annual_volume6.jsp#2.* The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

[19] The Exchange notes that there are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

[20] The COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of regular trading on the COMEX. NYMEX Rule 3.43 sets forth the composition of the subcommittee requiring that it consist of three (3) members that represent the gold market. Specifically, the Rule calls for the subcommittee to include a floor broker, a floor trader, and one who represents the trade. Rule 3.02 provides restrictions on Committee members and others who possess material, non-public information. A Committee Member is prohibited from disclosing for any purpose other than the performance of official duties relating to the Committee, material, non-public information obtained as a result of such person's participation on the Committee. In addition, no person may trade for his own account or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information that such person knows was obtained from such Committee member in violation of Rule 3.02. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on December 3, 2004.

[21] The Commission has previously approved the listing of products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.*, Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

[22] *See* Amendment No. 5, *supra* note 7.

COMEX and other world gold trading centers ends. Trading spreads and the resulting premium or discount on the Gold Shares may widen as a result of reduced liquidity in the OTC gold market. The Exchange does not believe that the Gold Shares will trade at a material discount or premium to the value of the underlying gold held by the Trust because of arbitrage opportunities.

2. Creation and Redemption of Trust Shares

Gold Shares will be issued only in baskets of 50,000 shares or multiples thereof (such aggregation referred to as the ''Basket Aggregation'' or ''Basket''). The Trust will issue and redeem the Gold Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[23] with the Sponsor, Barclays, and the Trustee, BNY, at the NAV per share next determined after an order to purchase or redeem Gold Shares in a Basket Aggregation is received in proper form. Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Gold Shares for resale.

Basket Aggregations will be issued in exchange for a corresponding amount of gold, measured in fine ounces (the ''Basket Gold Amount''). Similarly, the Trust will redeem Basket Aggregations of Gold Shares based on the Basket Gold Amount. The Basket Gold Amount will be determined at or about 4 p.m. each business day by the Trustee, BNY.[24] Initially, creation of a Basket will require 5,000 ounces of gold. This Basket Gold Amount will change from day to day and decrease over the life of the Trust due to the payment or accrual of fees and other expenses payable by the Trust. On each day that the Amex is open for regular trading, the BNY will adjust the quantity of gold constituting the Basket Gold Amount as appropriate to reflect sales of gold, any loss of gold that may occur, and accrued expenses.[25] The BNY will determine the Basket Gold Amount for a given business day by multiplying the NAV, as described below, for each Gold Share by the number of Gold Shares in each Basket (50,000) and dividing the resulting product by that day's COMEX settlement price for the spot month gold futures contract. Authorized Participants that submitted an order prior to 4 p.m. to purchase a Basket must transfer the Basket Gold Amount to the Trust in exchange for a Basket.

Gold Shares are not individually redeemable, and Authorized Participants that wish to redeem a Basket (*i.e.,* 50,000 Gold Shares) will receive the Basket Gold Amount in exchange for each Basket surrendered. Upon the surrender of the Gold Shares and payment of the applicable Trustee's fee and any expenses, taxes or charges, the BNY will deliver to the redeeming Authorized Participant the amount of gold corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, gold will then be delivered to the redeeming Authorized Participants in the form of physical bars only.[26] Thus, although Authorized Participants place orders to purchase or redeem Gold Shares throughout the trading day, the actual Basket Gold Amount is determined at 4 p.m. or shortly thereafter.

The Bank of Nova Scotia (''BNS'') will be the custodian for the Trust and responsible for safekeeping the gold.[27] Gold deposited with BNS must either (a) meet the requirements to be delivered in settlement of a COMEX gold futures contract pursuant to the rules adopted by the COMEX or (b) meet the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars as set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the LBMA.

Shortly after 4 p.m. each business day, the BNY will determine the NAV for the Trust. The BNY will calculate the NAV by multiplying the fine ounces of gold held by the Trust (after gold has been sold for that day to pay that day's fees and expenses) by the daily settlement value of the COMEX spot month gold futures contract.[28] At any point in time, the spot month contract is the futures contract then closest to maturity. If a COMEX settlement price for a spot month gold futures contract is not announced, the Trustee will use the most recently announced spot month COMEX settlement price, unless the Trustee (BNY), in consultation with the Sponsor (Barclays), determines that such price is inappropriate. Once the value of the gold is determined, the BNY will then subtract all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of gold and all other assets of the Trust. This adjusted NAV is then used to compute all fees (including the Trustee and Sponsor fees) that are calculated from the value of Trust assets. To determine the NAV, the BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. The BNY will calculate the NAV per share by dividing the NAV by the number of Gold Shares outstanding.

[23] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company (''DTC'') Participant or an Indirect Participant, and (iii) has in effect a valid Authorized Participant Agreement.

[24] At the same time, the BNY will also determine an ''Indicative Basket Gold Amount'' that Authorized Participants can use as an indicative amount of gold to be deposited for issuance of the Gold Shares on the next business day. The Trustee will disseminate daily the Indicative Basket Gold Amount on the Trust Web site. Because the creation/redemption process is based entirely on the physical delivery of gold (and does not contemplate a cash component), the actual number of fine ounces required for the Indicative Basket Gold Amount will not change intraday, even though the value of the Indicative Basket Gold Amount may change based on the market price of gold.

[25] The Trust's expense ratio, in the absence of any extraordinary expenses and liabilities, is established at 0.40% of the net assets of the Trust. As a result, the amount of gold by which the Basket Gold Amount will decrease each day will be predictable (*i.e.* 1/365th of the net asset value of the Trust multiplied by 0.40%).

[26] If the amount of gold corresponding to the Basket Gold Amount results in an amount that is less than a full gold bar denomination, the Authorized Participant has the ability to take and/or deliver fractional gold bar amounts. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on December 3, 2004.

[27] If the total value of the Trust's gold held by the custodian exceeds $2 billion, then the custodian will be under no obligation to accept additional gold deliveries. In such a case, the Trustee will retain an additional custodian.

[28] As previously stated, the COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of trading in New York. The daily settlement price for each contract (delivery month) is derived from the daily settlement price for the most active futures contract month that is not necessarily the spot month. This settlement price is the average of the highest and lowest priced trades reported during the last one (1) minute of trading during regular trading hours. For all other gold futures contract months (which may include the spot month), the settlement prices are determined by COMEX based upon differentials reflected in spread trades between adjacent months, such differentials being directly or indirectly related to the most active month. These differentials are the average of the highest and lowest spread trades (trades based upon the differential between the prices for two contract months) reported during the last fifteen (15) minutes of trading during regular trading hours. In the case that there were no such spread trades, the average of the bids and offers for spread transactions during that last fifteen (15) minute period are used. In the case where there are no bids and offers during that time, the contracts are settled at prices consistent with the differentials for other contract months that were settled by the first or second method. If the third method is used, the subcommittee of the COMEX members establishing those settlement prices provides a record of the differentials from other contract months that formed the basis for those settlements.

3. Availability of Information Regarding Gold Shares

The Web site for the Trust at *http://www.ishares.com,* which will be publicly accessible at no charge, will contain the following information about Gold Shares: (a) The prior business day's NAV, Basket Gold Amount, and reported closing price, and the present day's Indicative Basket Gold Amount; (b) the mid-point of the bid-ask price [29] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Prospectus; and (f) other applicable quantitative information, such as expense ratios, trading volumes, and the total return of the Gold Shares.[30] The Exchange will provide a hyperlink on its Web site at *http://www.amex.com* to the Trust's Web site at *http://www.ishares.com.*

The Exchange will also make available on its Web site daily trading volume, closing prices, and the NAV from the previous day of the Gold Shares. Amex will also disseminate during regular Amex trading hours from 9:30 a.m. to 4:15 p.m. New York time, through the facilities of the CTA, the last sale price for Gold Shares on a real-time basis.[31] Amex will disseminate each day the prior day's NAV and shares outstanding through the facilities of the CTA. In addition, Amex will disseminate the Indicative Trust Value on a per Gold Share basis every 15 seconds through the Consolidated Tape during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time.[32] Shortly after 4 p.m. each business day, the BNY, Amex, and Barclays (Sponsor) will disseminate the NAV for the Gold Shares, the Basket Gold Amount (for orders placed during the day), and the Indicative Basket Gold Amount (for use by Authorized Participants contemplating placing orders the following business day). The Basket Gold Amount, the Indicative Basket Gold Amount, and the NAV are communicated by the BNY to all Authorized Participants via facsimile or electronic mail message and will be available on the Trust's Web site at *http://www.ishares.com.*

4. Information About Underlying Gold Holdings

There is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. In most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically 20 minutes). The Exchange states that investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. In addition, an organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers.

As previously stated, the Exchange states that complete real-time data for gold futures and options prices traded on the COMEX is available by subscription from Reuters and Bloomberg. The closing price and settlement prices of the COMEX gold futures contracts are publicly available from the NYMEX at *http://www.nymex.com,* automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site.

E. Criteria for Initial Share Issuance and Continued Listing

The Trust will be subject to the criteria in Rules 1201A and 1202A for initial and continued listing of Gold Shares. The initial listing standards provide for a minimum number of shares to be outstanding at the time of commencement of trading on the Exchange. The continued listing criteria provides for the delisting or removal from listing of the Gold Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Gold Shares: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Gold Shares for 30 or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Gold Shares issued and outstanding; or (iii) if the market value of all Gold Shares is less than $1,000,000.
- If the value of the underlying gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, trust, custodian or the Exchange, or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated gold value.
- The Indicative Trust Value is no longer made available on at least a 15-second delayed basis.
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

F. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Gold Trust is $5,000. In addition, the annual listing fee applicable under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of shares in all series of the Gold Trust outstanding at the end of each calendar year and range from $15,000 to $30,000 per year.

G. Exchange Trading Rules and Policies

Under Amex Rules 1200A *et seq.*, Commodity-Based Trust Shares are

[29] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[30] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 18, 2005 (as to examples of ''other quantitative information'').

[31] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 18, 2005 (as to real-time dissemination of last sale price).

[32] The Indicative Trust Value will be calculated based on the amount of gold required for creations and redemptions on that day (*e.g.*, Indicative Basket Gold Amount) and a price of gold derived from the most recently reported trade price in the active gold futures contract. The prices reported for the active contract month will be adjusted based on the prior day's spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract will not be adjusted.

The Indicative Trust Value will not reflect changes to the price of gold between the close of trading at the COMEX, typically 1:30 p.m. New York time, and the open of trading on the NYMEX ACCESS market at 2 p.m. New York time. While the market for the gold futures is open for trading, the Indicative Trust Value can be expected to closely approximate the value per share of the Indicative Basket Gold Amount. The Indicative Trust Value on a per Gold Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

generally subject to the Amex trading rules applicable to equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and customer suitability (Amex Rule 411).

Initial equity margin requirements of 50% will apply to transactions in Gold Shares. Gold Shares will trade on the Amex until 4:15 p.m. New York time each business day and will trade in a minimum price variation of $0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Gold Shares as eligible for this treatment.[33]

Gold Shares will be deemed ''Eligible Securities,'' as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of Gold Shares made in connection with the creation and redemption of Gold Shares will not be subject to the prohibitions of Amex Rule 190.[34] Unless exemptive or no-action relief is available, Gold Shares will be subject to the short sale requirements of Rule 10a–1 and Regulation SHO under the Act.[35] If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

The Exchange represents that the Gold Shares will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on ''plus ticks'' and sell on ''minus ticks,'' in order to bring the Gold Shares into parity with the underlying gold and/or futures price. Proposed Commentary .01 to proposed Amex Rule 1203A sets forth this limited exception to Amex Rule 170.

Amex states that the adoption of Amex Rule 1203A relating to certain specialist prohibitions will address potential conflicts of interest in connection with acting as a specialist in the Gold Shares. Specifically, Amex Rule 1203A provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Gold Shares so that the specialist or affiliated person may not act or function as a market maker in the underlying gold, related gold futures contract or option, or any other related gold derivative. An affiliated person of the specialist consistent with Amex Rule 193 (Affiliated Persons of Specialists) may be afforded an exemption to act in a market making capacity, other than as a specialist in the Gold Shares on another market center, in the underlying gold, related gold futures, options on futures, or any other related gold derivative. In particular, proposed Rule 1203A provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Gold Shares on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

H. Surveillance

Amex represents that its surveillance procedures applicable to trading of Gold Shares are adequate to deter manipulation, will be similar to those applicable to other trust issued receipts and exchange-traded fund shares (''ETFs''), and will incorporate and rely upon existing Amex surveillance procedures governing options and equities. The Exchange currently has in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX gold futures contracts.

Also, the Exchange states that adoption of Rule 1204A will facilitate surveillance of the specialist handling Gold Shares. Amex Rule 1204A requires that the specialist handling the Gold Shares to provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivative. Amex Rule 1204A also prohibits the specialist in the Gold Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Gold Shares).

As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations, and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization, as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

I. Information Circular

The Amex will distribute an information circular (''Information Circular'') to its members in connection with the trading of Gold Shares. The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the Gold Shares are, how a basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Gold Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination information regarding the per share Indicative Trust Value, trading information, and applicable suitability rules. The Information Circular will also explain that the Gold Trust is subject to various fees and expenses described in

[33] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[34] *See* Commentary .05 to Amex Rule 190.

[35] The Gold Trust has requested exemptive relief in connection with the trading of Gold Shares from the operation of certain short sale requirements of Rule 10a–1 and may seek no-action relief from Rule 200(g) of Regulation SHO under the Act. See 17 CFR 240.10a–1; 17 CFR 242.200(g). The requested relief is currently pending with the Commission staff in the Division of Market Regulation. If granted, Gold Shares would be exempt from Rule 10a–1, permitting sales without regard to the ''tick'' requirements of Rule 10a–1. Rule 10a–1(a)(1)(i) provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an ''uptick'') or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a ''zero-plus tick''). No-action relief from the marking requirements of Rule 200(g) of Regulation SHO would permit broker-dealers, subject to certain conditions, to mark short sales in the Gold Shares ''short,'' rather than ''short exempt.''

the Registration Statement and that the number of ounces of gold required to create a basket or to be delivered upon a redemption of a basket will gradually decrease over time because the Gold Shares comprising a basket will represent a decreasing amount of gold due to the sale of the Gold Trust's gold to pay Trust expenses. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical gold and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

The Information Circular will also notify members and member organizations about the procedures for purchases and redemptions of Gold Shares in baskets and that Gold Shares are not individually redeemable but are redeemable only in basket-size aggregations or multiples thereof. The Information Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Gold Shares and inform them of Amex rules regarding trading halts applicable to Gold Shares. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Circular will disclose that the NAV for Gold Shares will be disseminated shortly after 4 p.m. each trading day based on the COMEX daily settlement value, which is disseminated shortly after 1:30 p.m. New York time each trading day.

J. Suitability

As stated, the Information Circular will inform members and member organizations of the characteristics of the Gold Trust and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Rule 411, members and member organizations are required in connection with recommending transactions in the Gold Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

K. Trading Halts

Amex Rule 117 sets forth the trading halt parameters, *i.e.*, ''circuit breakers,'' applicable to the Gold Shares during periods of extraordinary volatility. In addition to the parameters set forth in Rule 117, the Exchange will halt trading in Gold Shares if trading in the underlying COMEX gold futures contract is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act [36] and the rules and regulations thereunder applicable to a national securities exchange.[37]

A. Surveillance

Information sharing agreements with markets trading securities underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. Although an information sharing agreement with the OTC gold market is not possible, the Commission believes that the unique liquidity and depth of the gold market, together with Amex's information sharing agreement with NYMEX (of which COMEX is a division) and Exchange Rules 1203A and 1204A, create the basis for Amex to monitor for fraudulent and manipulative practices in the trading of the Gold Shares.[38]

The OTC market for gold is extremely deep and liquid. The LBMA estimates that the monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day.[39] In addition, COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million ounces per day.[40]

Finally, Amex Rule 1204A will require that the specialist handling the Gold Shares provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivative. The Commission believes these reporting and record-keeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. Amex Rule 1204A will also prohibit the specialist in the Gold Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Gold Shares). In addition, Amex Rule 1203A will prohibit the specialist in the Gold Shares from being affiliated with a market maker in physical gold, gold futures, or options on gold futures unless adequate information barriers are in place and approved by the Exchange.

B. Dissemination of Information About the Gold Shares

The Commission finds that sufficient venues for obtaining reliable gold price information exist so that investors in the Gold Shares can adequately monitor the underlying spot market in gold relative to the NAV of their Gold Shares. As discussed more fully above, the Commission notes that there is a considerable amount of gold price and gold market information available 24 hours per day on public Web sites and through professional and subscription services. In addition, the Trustee will disseminate each day on the Trust Web site, an estimated amount representing the Basket Gold Amount. The Exchange will also disseminate through the CTA the Indicative Trust Value on a per share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time (except between 1:30 p.m. and 2 p.m., the time period from the close of regular trading of the COMEX gold futures contract and the start of trading of COMEX gold futures contracts on NYMEX ACCESS).

[36] 36 15 U.S.C. 78f(b).

[37] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[38] The Commission notes that it recently reached a similar conclusion with respect to a proposal by the New York Stock Exchange to list and trade trust shares that, as in the Amex proposal, correspond to a fixed amount of gold. *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004). In that recent order, the Commission noted that it had previously approved the listing and trading of foreign currency options, for which there is no self-regulatory organization or Commission surveillance of the underlying markets, on the basis that the magnitude of the underlying currency market militated against manipulations through inter-market trading activity. *See id.,* at 64619 (Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

[39] There are no authoritative published figures for overall worldwide volume in gold trading. The LBMA publishes statistics compiled from the six members offering clearing services. Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm.*

[40] Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at *http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2.* The statistics are based on gold futures contracts, each of which relates to 100 ounces of gold.

The last sale price for Gold Shares will also be disseminated on a real-time basis over the Consolidated Tape.

The Commission also notes that the Trust's Web site at *http://www.ishares.com* is and will be publicly accessible at no charge and will contain the NAV of the Gold Shares and the Basket Gold Amount as of the prior business day, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV. Additionally, the Trust's Web site, to which the Amex will link, will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information. The Commission believes that dissemination of this information will facilitate transparency with respect to the Gold Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

Further, the Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Gold Shares are consistent with the Act. For example, Gold Shares will be subject to Amex rules governing trading halts, responsibilities of the specialist, and customer suitability requirements. In addition, the Gold Shares will be subject to Amex Rules 1201A and 1202A for initial and continued listing of Gold Shares.

The Commission believes that listing and delisting criteria for the Gold Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Gold Shares. Finally, the Commission believes that the Exchange's Information Circular adequately will inform members and member organizations about the terms, characteristics, and risks in trading the Gold Shares.

IV. Amendment No. 5

The Amex has requested that the Commission grant accelerated approval to Amendment No. 5 to the proposed rule change.[41] The Commission believes that the amendments proposed in Amendment No. 5 regarding the requirement for separate rule filings under Section 19(b)(2) of the Act for Commodity-Based Trust Shares, certain fees and expenses, and other minor changes to the proposal, provide clarity and additional detail, but do not change the substance of the proposal. Because the amendment clarifies and makes other minor changes to the proposal, the Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,[42] to approve Amendment No. 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 5 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available on Amex's Web site (*http://www.amex.com*) and for inspection and copying at the Amex's Office of the Secretary. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–38 and should be submitted on or before February 16, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[43] that the proposed rule change (SR–Amex–2004–38), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–283 Filed 1–25–05; 8:45 am]

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[41] *See* Amendments Nos. 1 and 2, *supra* notes 4 and 5.

[42] 15 U.S.C. 78s(b)(2).

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51049; File No. SR–BSE–2004–52]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Market Maker Quote Obligations Under the Rules of the Boston Options Exchange Facility

January 18, 2005.

On November 24, 2004, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2], a proposed rule change to adopt a rule under the rules of the Boston Options Exchange Facility (''BOX'') to provide BOX Market Makers protection from the unreasonable risk associated with communication failures and systemic errors. On December 3, 2004, the BSE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 14, 2004.[3] The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 50814 (December 7, 2004), 69 FR 74547 (December 14, 2004).

and regulations thereunder that are applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the proposal does not alter the obligations of BOX Market Makers. The proposed rule change codifies BOX system functionality which should provide BOX Market Makers assistance in effectively managing their quotations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–BSE–2004–52) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–281 Filed 1–25–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51052; File No. SR–CBOE–2005–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Amending Its Marketing Fee

January 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2005, the Chicago Board Options Exchange, Inc., (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its marketing fee to assess a fee on options on Standard & Poor's Depositary Receipts (''SPDRs®'') involving transactions of Market-Makers (including Designated Primary Market-Makers, or DPMs, and electronic Designated Primary Market-Makers, or e-DPMs) other than Market-Maker-to-Market-Maker transactions. The fee will be imposed at the rate of $.22 per contract. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

Chicago Board Options Exchange, Inc.

Fee Schedule

1.–4. No change.

Notes:

(1)–(5) No change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, e-DPMs and DPMs at the rate of $.22 per contract on all classes of equity options, *options on HOLDRs, and options on SPDRs.* [other than] *The fee will not apply to* Market-Maker-to-Market-Maker transactions. This fee shall not apply to index options and options on ETFs (*other than options on SPDRs*). [The fee shall apply to options on HOLDRs.] Should any surplus of the marketing fees at the end of each month occur, those funds would be carried forward to the following month. The Exchange would then refund such surplus at the end of the quarter, if any, on a pro rata basis based upon contributions made by the Market-Makers, e-DPMs and DPMs.

(7)–(14) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 29, 2004, the CBOE amended its marketing fee program.[5] The current marketing fee is assessed upon DPMs, e-DPMs, and Market-Makers at a rate of $0.22 for every contract they enter into on the Exchange, other than Market-Maker-to-Market-Maker transactions, including all transaction between any combination of DPMs, e-DPMs, and Market-Makers.[6] Currently, the marketing fee is assessed in all equity option classes and options on HOLDRs.[7] The Exchange proposes to amend its marketing fee to also apply to options on SPDRs (ticker symbol ''SPY''), an Exchange Traded Fund (''ETF'').[8] This fee shall not apply to index options and options on ETFs (other than options on SPDRs). The Exchange states that it is not making any other changes to its marketing fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(4) of the Act[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the CBOE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

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[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 50736 (November 24, 2004), 69 FR 69966 (December 1, 2004) (SR–CBOE–2004–68) (''Release No. 34–50736'').

[6] *See* Release No. 34–50736 for a more detailed description of the CBOE's marketing fee program.

[7] HOLDRs are trust-issued receipts that represent an investor's beneficial ownership of a specified group of stocks. *See* Interpretation .07 to CBOE Rule 5.3.

[8] ETFs are shares of trusts that hold portfolios of stocks designed to closely track the price performance and yield of specific indices.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 thereunder.[12] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–05 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–05 and should be submitted on or before February 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51050; File No. SR–ISE–2004–31]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to System-Assisted Quotation Services

January 18, 2005.

On September 30, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify in the ISE's rules certain services the ISE offers market makers to help them manage their quotations. On November 16, 2004, the ISE submitted Amendment No.1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 14, 2004.[3] The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the proposal does not alter the obligations of ISE market makers. The proposed rule change codifies ISE system functionality which should provide ISE market makers assistance in effectively managing their quotations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–ISE–2004–31) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–280 Filed 1–25–05; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 50813 (December 7, 2004), 69 FR 74551 (December 14, 2004).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51054; File No. SR–NYSE–2005–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Proposed Changes to Exchange Rules 440F (''Public Short Sale Transactions Effected on the Exchange'') and 440G (''Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations'')

January 18, 2005.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 11, 2005, the New York Stock Exchange, Inc. (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is filing with the SEC proposed amendments to Exchange Rules 440F (''Public Short Sale Transactions Effected on the Exchange'') and 440G (''Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations'') to include certain short-exempt sales on Reports of Short Interest (*i.e.*, Forms SS20 and 121). The text of the proposed amendments is available from the NYSE and the Commission.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rule 440F requires members and member organizations to report round-lot short sale transactions for public customers on Form SS20. Exchange Rule 440G requires members and member organizations to report round-lot short sale transactions for members, allied members or member organizations on Form 121. Rule 440F.10 (''Requirements for filing'') and 440G.10 (''Requirements for filing'') also provide ''General Instructions'' to complete ''Reports on Form SS20'' and ''Reports on Form 121,'' respectively.

Currently, short-exempt sales are excluded when computing the total short interest on the forms, under Rules 440F and 440G, respectively. However, the SEC greatly increased the number of short-exempt sales transactions when they adopted Regulation SHO. Concurrently with the adoption of Regulation SHO, the SEC issued the Pilot Order[5] providing for a one-year Pilot program under which the provisions of Rule 10a–1 and any SRO short sale price test, including the tick test contained in Exchange Rule 440B, are suspended. Subsequently, on November 29, 2004, the SEC issued a Second Pilot Order[6] postponing its previously announced one-year pilot suspending the provisions of Rule 10a–1 and any short sale price test of any exchange or national securities association for short sales of designated securities.

The Pilot was established as part of the SEC's review of short sale regulations in conjunction with the adoption of Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to mark short sale orders of securities enumerated in the Pilot Order effected during any Pilot period as ''short exempt'' so that such orders are not subject to price tests. A large number of broker-dealers had informed the Commission that it would be inefficient and very costly for them to comply with this marking requirement for Pilot stocks, requiring significant systems changes for both firms and customers. In addition, these broker-dealers had raised the possibility that these significant systems changes may be in effect for only the duration of the one-year Pilot. As a result, the Exchange, along with other market centers, have agreed to ''mask'' short sale orders in Pilot stocks for the duration of the Pilot, as it would be more efficient than having broker-dealers and their customers make the changes. However, as it would take some time to make necessary changes to the various market centers systems, the market centers will not be able to ''mask'' orders until May 2, 2005. As a result, the Commission issued the Second Pilot Order extending the implementation of the Pilot until that date.

The Pilot is now scheduled to begin on May 2, 2005 and end on April 28, 2006. All other terms of the Pilot Order[7] remain unchanged,[8] which requires these Pilot ''designated securities'' to be marked ''short-exempt'' sales. Accordingly, the Exchange proposes to amend the instructions to Forms SS20 and 121, pursuant to Rules 440F and 440G to include these certain short-exempt sales on Reports of Short Interest.

The Exchange is proposing amendments to Rules 440F.10 and 440G.10 to conform the instructions to Forms SS20 and 121, respectively, to the Pilot Order. The purpose of Rules 440F and 440G is to capture short interest for reporting purposes, which is meant to include the designated securities subject to the Pilot Order—regardless as to whether they are marked ''short-exempt.'' In addition, the Exchange is proposing some minor amendments to the rules to remove obsolete references.

(1) Statutory Basis

The statutory basis for the proposed rule change is Sections 6(b)(5)[9] and 17A[10] of the Exchange Act which require, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest; and the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[4] Both Exhibits A and B are available at *http://www.nyse.com/regulation/* and *http://www.sec.gov/rules/sro.shtml.*

[5] *See* Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004).

[6] *See* Securities Exchange Act Release No. 50747 (November 29, 2004) (''Second Pilot Order''), available at *http://www.sec.gov/rules/other/34–50747.htm.*

[7] *See* Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) (''Pilot Order''), available at *http://www.sec.gov/rules/other/34–50104.htm.* The Pilot Order provided for a one-year pilot program (''Pilot Program''), under which the provisions of Rule 10a–1 and any self-regulatory organization (''SRO'') short sale price test, including the tick test contained in Exchange Rule 440B, are suspended for short sales in: (1) Certain ''designated securities'' identified in Appendix A to the SEC's Pilot Order; (2) any security included in the Russell 1000 Index effected between 4:15 p.m. e.s.t. and the open of the consolidated tape on the following day; and (3) any security not included in (1) and (2) above effected in the period between the close of the consolidated tape (*i.e.*, after 8 p.m. e.s.t.) and the open of the consolidated tape the following day. During the Pilot, all other provisions of Rule 10a–1 and Regulation SHO—including the marking, locate and delivery requirements—remain in effect. The SEC also noted in the Pilot Order that SROs, including the Exchange, would actively monitor trading in the Pilot Program securities to identify any abusive short selling.

[8] *See* SEC, Division of Market of Regulation, Responses to Frequently Asked Questions Concerning Regulation SHO (December 17, 2004), available at *http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm.*

[9] 9 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78q–1.

any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–07 in the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2005–07. This file number should be included on the subject line of e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR–NYSE–2005–07 and should be submitted on or before February 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–279 Filed 1–25–05; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meetings.

DATES:

February 23, 2005, 9 a.m.–5 p.m.
February 24, 2005, 9 a.m.–6 p.m.*
February 25, 2005, 9 a.m.–1 p.m.

*The full deliberative panel meeting ends at 5 p.m. The standing committees of the Panel will meet from 5 p.m. until 6 p.m.

ADDRESSES: Hotel Monaco, 333 St. Charles Ave., New Orleans, LA 70130.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentives programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA, and receive public testimony.

The Panel will meet in person commencing on Wednesday, February 23, 2005 from 9 a.m. to 5 p.m. Thursday, February 24, 2005 from 9 a.m. to 5 p.m. (standing committee meetings from 5 p.m. to 6 p.m.); and Friday, February 25, 2005 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings from Social Security, presentations on Medicaid and Medicare, full Panel deliberations and other Panel business will be held Wednesday, Thursday, and Friday, February 23, 24, and 25, 2005. Public testimony will be heard in person Wednesday, February 23, 2005 from 3 p.m. to 3:30 p.m. and on Friday, February 25, 2005 from 9 a.m. to 9:30 a.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Shirletta Banks, at *Shirletta.Banks@socialsecurity.gov* or calling (202) 358–6430.

The full agenda for the meeting will be posted on the Internet at *http://www.socialsecurity.gov/work/panel* approximately one week before the meeting or can be received in advance electronically or by fax upon request.

[11] 17 CFR 200.30–3(a)(12).

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

☐ Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.

☐ Telephone contact with Shirletta Banks at (202) 358–6430.

☐ Fax at (202) 358–6440.

☐ E-mail to *TWWIIAPanel@socialsecurity.gov.*

Dated: January 18, 2005.

Carol Brenner,

Designated Federal Officer.

[FR Doc. 05–1393 Filed 1–25–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4934]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Child Support Enforcement: Notice of Meeting

There will a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Wednesday, February 2, 2005, from 1–5 pm. The meeting will be held in the Monet (4) Room of Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC. The purpose of this meeting is to help the State Department and the HHS Office of Child Support Enforcement prepare for the April 2005 negotiating session of a new multilateral child support convention under the auspices of the Hague Conference on Private International Law. The draft text of the convention can be found on The Hague Conference Web site (*http://hcch.e-vision.nl/upload/wop/maint_wd34e.pdf*). The meeting is open to the public up to the capacity of the room.

Interested persons are invited to attend and to express their views. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance of the meeting. Written comments should be submitted by e-mail to Mary Helen Carlson at *carlsonmh@state.gov.* All comments will be made available to the public by request to Ms. Carlson via e-mail or by phone ((202) 776–8420).

Dated: January 18, 2005.

Mary Helen Carlson,

Attorney-Adviser, Office of the Legal Adviser for Private International Law, Department of State.

[FR Doc. 05–1360 Filed 1–25–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Order Soliciting Community Proposals

AGENCY: Department of Transportation.

ACTION: Notice of Order Soliciting Community Proposals (Order 2005–1–12) Docket OST–2005–20127.

SUMMARY: The Department of Transportation is soliciting proposals from communities or consortia of communities interested in receiving a grant under the Small Community Air Service Development Program. The full text of the Department's order is attached to this document.

DATES: Grant Proposals should be submitted no later than April 22, 2005.

ADDRESSES: Interested parties should submit an original and two copies of their proposals bearing the title ''Proposal under the Small Community Air Service Development Program, Docket OST–2005–20127, as well as the name of the applicant community or consortium of communities, the legal sponsor, and the applicant's DUNS number to Dockets Operations and Media Management, M–30, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Teresa Bingham, Associate Director, Office of Aviation Analysis, 400 7th Street, SW., Washington, DC 20590, (202) 366–1032.

Dated: January 19, 2005.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–1430 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. OST–2005–20112]

Notice of Regulatory Review

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation intends to conduct a review of its existing regulations and its current Regulatory Agenda. As part of this review, the Department invites the public to participate in a comment process designed to (1) help the Department improve its rules to make them more effective and less costly or burdensome, (2) identify rules no longer needed and/or new rules that may be needed, and (3) help the Department prioritize its rulemaking activities. The Department also intends to hold a public meeting to discuss and consider the public's comments.

DATES: Comments should be received on or before April 29, 2005. Late-filed comments will be considered to the extent practicable. In addition, the Department intends to hold a public meeting on April 12 and 19, 2005, in Washington, DC, to discuss public comments. Commenters wishing to have time allocated to them at the public meeting should submit initial comments by February 25, 2005, and clearly indicate their desire to have time allocated at the public meeting.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number OST–2005–20112) by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the name of the DOT agency that has issued the rule to which the comment pertains and the docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL–401 on the plaza level of the Nassif

Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can access the docket for this notice by inserting the five-digit docket number into the DMS ''quick search'' function.

FOR FURTHER INFORMATION CONTACT: Karen Starring, Attorney Advisor, Office of General Counsel, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590–0001. Telephone (202) 366–4723. E-mail *karen.starring@ost.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

In addition to the Office of the Secretary (OST), the Department of Transportation (Department or DOT) includes the Bureau of Transportation Statistics (BTS) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Research and Special Programs Administration (RSPA); and St. Lawrence Seaway Development Corporation (SLSDC). While RSPA and BTS are being reorganized into two new operating administrations as the result of recently-enacted legislation, for commenters' convenience we believe it is sensible to have comments refer to the names of DOT organizations as they were when rules were promulgated.

Each of these elements of DOT has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, mass transit, motor vehicle, commercial space, and pipeline transportation areas. DOT regulates aviation consumer and economic issues, and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor vehicle safety. It writes regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern internal programs such as acquisition and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles.

Improvement of our regulations is a continuous focus of the Department. There should be no more regulations than necessary and those that are issued should be simpler, more comprehensible, and less burdensome. Most rules are issued following notice to the public and opportunity for comment. Once issued, rules should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help implement this goal, the Department wants to obtain written public comments and to hold a public meeting in Washington, DC, on April 12 and 19, 2005 on how to (1) improve our rules to be more effective and less costly or burdensome, (2) identify rules no longer needed and/or new rules that may be needed, and (3) help prioritize our current rulemaking activities, which are set forth in our semi-annual Regulatory Agenda (69 FR 73492, Dec. 13, 2004).

The Department's General Counsel will preside over the public meeting. Senior officials of the Department's operating administrations also will attend this meeting. Because seating may be limited, the Department will reserve seats for participants, and seats for attendees will be available on a first-come, first-serve basis. Please note that seats may become available throughout the public meeting as attendees come and go.

Existing Reviews of Rules

The Department regularly makes a conscientious effort to review its rules. We accomplish this in a number of ways. First, we have a 10-year plan for the review of our existing regulations, (see Appendix D to our semi-annual Regulatory Agenda published in the **Federal Register** on December 13, 2004 (69 FR 73492)). We regularly invite public participation in those reviews as well as seeking general suggestions on rules that should be revised or revoked. Under 49 CFR part 5, anyone may petition the Department for rulemaking or for an amendment or exemption to a rule. Some of our operating administrations may also conduct periodic public reviews to focus on specific issues or to obtain comments on rulemaking priorities. For example, on February 25, 2004, FAA requested comments from the public to assist it in identifying those regulations currently in effect that it should amend, remove, or simplify (*see* 69 FR 8575). It is not necessary for the commenters to resubmit those comments unless the commenter desires to provide additional information or to request time during the public meeting. The Department will obtain copies of comments submitted in response to FAA's request and include them in its review.

We have also worked closely with the Office of Management and Budget (OMB) to identify rules appropriate for review and reform. Beginning in 2001, OMB has sought comments from the public on Federal agency rules and guidance that should be reviewed. In 2002, OMB initially referred 38 rules to the Department as possible candidates for reform. Subsequently, OMB has referred additional rules. As of OMB's 2003 report to Congress, DOT had completed, initiated, or planned action for 27 regulatory items, was still considering whether to take action on 13 items, and had decided against taking further action on 13 items. More recently, in connection with OMB's 2004 report to Congress, OMB has provided DOT with another 13 items that relate to manufacturing, and we are considering those. Any items previously submitted to OMB in writing need not be resubmitted, as the Department has received those.

As with regard to the OMB regulatory review nominations process, the Department takes seriously its task of ensuring that its regulations meet the objectives of efficiency, effectiveness, fairness, and practicality. At the same time, it would be very useful to encourage broader participation in the review of the Department's rules than we have received in the past. For example, most of the comments to OMB about the Department's rules came from one public advocacy organization, one state Department of Transportation, and one aircraft manufacturer. While we welcome and appreciate the input of those commenters, we note that other stakeholder groups, associations, and individuals provided only a few comments. Most trade associations, interest groups, and consumer groups, and most individual regulated parties—whether public or private sector organizations—did not comment through the OMB process. The Department strongly encourages all parties affected by DOT regulations to comment in response to this notice, so that the Department has as much information as possible on which to base decisions about the future course of its regulatory reform and improvement efforts.

Our Current Review Plan

We recognize that, in carrying out our important regulatory responsibility, DOT has a large amount of rulemaking

activity. For example, we have 89 ongoing significant rulemaking entries on our current Regulatory Agenda and we have issued 85 significant final rules in the last three years. Thus, in making plans for the next few years, the Secretary wants the Department to add to and improve our earlier efforts to review our existing rules, and to provide this additional opportunity for public participation. Hopefully, this will also provide a better opportunity for an exchange of views among participants in the process. For example, the public meeting will provide an opportunity for those affected by our regulations to directly communicate with the Department's senior officials. We are looking forward to positive exchanges that will provide us with a ''real world'' perspective and data, with in-depth analysis of perceived problems.

For existing regulations, public comments might usefully address, among other things, the following factors: (1) The opportunity to simplify or clarify language in a regulation; (2) the opportunity to eliminate overlapping and duplicative regulations, including those that require repetitive filings for conducting business with the Department; (3) the opportunity to eliminate conflicts and inconsistencies in the Department's regulations and those of its agencies; (4) the opportunity to eliminate outdated regulations; (5) the opportunity to reconsider the burdens imposed on those directly or indirectly affected by the regulation and, specifically, those that are costly when compared to the benefit provided; (6) the opportunity to revise regulations in which technology, economic conditions or other factors have changed in the area affected by the regulation; (7) the opportunity to reconsider burdens imposed on small entities, and (8) the opportunity to reconsider federalism or tribalism impacts and pre-emption issues. The Department is also interested in comments about DOT rules that potentially duplicate or conflict with the rules of other Federal agencies or state, local, or tribal governmental bodies. The Department is specifically interested in the public's suggestions for modifications to existing regulations, that would make the rules more cost-effective, cost-beneficial, or less costly; that would effectively improve public benefits; or that would temper disproportionate impacts. Comments will be most helpful if they reference a specific regulation, by CFR cite, and provide the Department information on what needs fixing and why. Comments do not necessarily need to address how to fix the perceived problem, though such comments are welcome.

In addition, the Department seeks comments on its Regulatory Agenda for the upcoming year. Specifically, the Department seeks public comment on the Department's priorities. Are there rulemakings on which we should place more or less emphasis or give a higher priority in scheduling? Are the Department's rulemaking priorities in line with public need?

In order to make the public meeting beneficial, the Department requests careful analysis of specific regulations and detailed written comments. It is our intent that the public meeting will provide an opportunity for the General Counsel and other Department officials to interact with individuals or stakeholder representatives and to seek clarification and follow-up on comments. To enable those officials to effectively participate in the public meeting, they will need some information in advance of the hearing. As a result, we are establishing the following process.

1. Suggestions for Discussion at Public Meeting:

a. By the end of the first 30 days of the comment period, the Department requests that commenters submit their suggestions for discussion at the public meeting and indicate whether they want time allocated to them at the public meeting. The Department reserves the right to allocate time as necessary to ensure that as many commenters as possible may participate in the public meeting in a meaningful manner. In the event that it becomes necessary to limit the number of participants, the Department initially plans to do so in a first-come, first-serve manner.

b. The initial comments from those intending to participate in the public meeting should contain enough details to permit DOT officials to sufficiently prepare and ask questions.

c. The initial comments may be augmented anytime before the end of the full comment period.

d. Anyone wishing to participate in the public meeting who needs accessibility accommodations, including sign language interpreters, should contact the Department as soon as possible as directed under the For Further Information Contact heading above.

2. Public Meeting:

a. After receiving this initial public comment, the Department will organize those suggestions (including overlapping or duplicate suggestions) by topic and Operating Administration (OA) for discussion during the public meeting.

b. By having the public meeting after receiving initial public comment and by organizing the discussion around topics and OAs, the Department will be in a better position to discuss with commenters the issues with regard to a particular rule, broad category of rules, or affected group or industry, rather than merely recording public comment for later review.

c. The Department plans to hold a public meeting on April 12 and 19, 2005 in Washington, DC, and will provide at least one week's notice of the hearing outline.

d. The meeting will be chaired by the DOT's General Counsel, who has general oversight of the DOT's rulemaking. Other DOT officials will, at a minimum, attend those portions of the meeting pertaining to their areas of responsibility.

3. Other Written Comments:

a. The Department will continue to accept comments through April 29, 2005. Those who do not wish to attend the public meeting may, of course, submit comments at any time during the comment period.

b. This additional time will also allow those who did participate in the meeting to supplement their earlier comments either on their own initiative or in response to comments or questions at the hearing.

c. It will also allow anyone to rebut or otherwise respond to earlier comments submitted in writing or made at the meeting.

4. Follow-up Action by DOT:

a. We will place a transcript of the public meeting in our public docket (*http://dms.dot.gov*) as soon as possible after the end of the hearing. We note that because the docket is Internet accessible, it should allow those with Internet access to review those proceedings as well as other comments. We hope this will further improve the interchange of ideas.

b. This review will provide meaningful and significant input to the Secretary, the General Counsel, and other DOT senior officials. As soon as possible, depending on the number of comments we receive and the issues raised, the Department will publish a report providing at least a brief response to the comments we have received, including a description of any further action we intend to take.

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

(Authority: 5 U.S.C. 610; E.O. 12866, 58 FR 51735, Oct. 4, 1993.)

Issued this 14th day of January, 2005, in Washington, DC.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05–1431 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From all Terms, Conditions, Reservation and Restrictions of a Quitclaim Deed Agreement Between the City of Fernandina Beach and the Federal Aviation Administration for the Fernandina Beach Municipal Airport, Fernandina Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties (approximately 28.43 acres) at the Keystone Airpark, Starke, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the Town of Keystone Heights, dated August 21, 1947. The release of property will allow the Keystone Airpark Authority to dispose of the property for other than aeronautical purposes. The property is located in the southwest corner of the airport west of State Road 100 in proximity to the approach of Runway 4. The parcel is currently designated as non-aeronautical use. The property will be disposed of for the purpose of conveying title to the United States Department of the Interior for the protection of the Florida National Scenic Trail. The fair market value of the property has been determined by appraisal to be $410,000. The airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvements project.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airpark Clerk's office and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification''of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATE: February 26, 2005.

ADDRESSES: Documents are available for review at the Airport Clerk's office, Keystone Airpark Authority, 7100 Airport Road, Starke, FL 32091–9347, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Richard M. Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 05–1409 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19217; Notice 2]

Mitsubishi Motor Sales Caribbean, Inc., Ruling on Petition for Decision of Inconsequential Noncompliance

Mitsubishi Motor Sales Caribbean, Inc. (MMSC) has determined that certain vehicles that it imported and distributed in 1997 through 2004 do not comply with S4.5.1(b)(2)(ii), (c)(1) and (e)(1)(ii) of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), MMSC has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of MMSC's petition was published, with a 30 day comment period, on October 8, 2004, in the **Federal Register** (69 FR 60458). NHTSA received no comments.

A total of approximately 85,065 model year 1998 to 2005 Mitsubishi vehicles are affected. Approximately 70,592 Monteros, Nativas, Diamantes, Mirages, Lancers, and Outlanders covering model years from 1998 to 2005 do not comply with S4.5.1(b)(2)(ii), ''Sun visor air bag warning label.'' Approximately 10,761 Nativas covering model years 2000–2004 do not comply with S4.5.1(c)(1), ''Air bag alert label.'' Approximately 85,065 Monteros, Nativas, Diamantes, Mirages, Lancers, 3000 GTs, Outlanders, Galants, Eclipses, Eclipse Spyders, and Endeavors covering model years 1998–2005 do not comply with S4.5.1(e)(1)(ii), ''Label on the dashboard.''

The relevant requirements of FMVSS No. 208, S4.5.1, ''Labeling and owner's manual information,'' are as follows: ''(b)(2)(ii) The message area [of the permanent sun visor air bag warning label] * * * shall be no less than 30 cm^2. * * * (c)(1) The message area [of the permanent sun visor air bag alert label] * * * shall be no less than 20 square cm. * * * (e)(1)(ii) The message area [of the temporary label on the dashboard] * * * shall be no less than 30 cm^2.''

On the affected vehicles, the actual measurement of the English message area for the sun visor air bag warning label is 27 cm^2 rather than the required minimum of 30 cm^2, for the sun visor alert label is 12 cm^2 rather than the required minimum of 20 cm^2, and for the dash label is 19 cm^2 rather than the required minimum of 30 cm^2. MMSC explains that these noncompliances resulted from reducing the English message areas when the respective Spanish translations were added.

MMSC believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. In support of its petition, MMSC states the following:

> The likelihood consumers will perceive the presence of the labels is enhanced since the overall sizes of the bilingual labels are larger than the English-only labels while the understandability performance of the warnings is enhanced since the message reaches a wider audience than an English-only version.
>
> The legibility of the labels at the required distance (*i.e.*, from all front seating positions) is not degraded since the font size, font color, and letter spacing remain the same as our English-only versions that meet the message area requirements.
>
> The labels meet all other requirements in every respect including heading content, heading color, message content, message area color, message text color, alert symbol content, and alert symbol color. * * *
>
> Mitsubishi believes the percentage of vehicles actually fitted today with the non-compliant temporary dash labels is for all intents and purposes zero, considering in all likelihood they have already been removed by customers after purchase.

MMSC has received no customer complaints related to the bilingual labels.

NHTSA has reviewed the petitioner's arguments. The air bag warning labels are the agency's primary method for obtaining the owner's attention and conveying important safety information. The agency believes that these air bag warning labels are necessary to make owners aware of the safest way to use their air bag equipped vehicles. In NHTSA's occupant crash protection rule published on May 12, 2000 (65 FR 30680), the agency stated ''* * * as with the current labels, manufacturers may provide translations of the required English language message as long as all the requirements for the English label are met, *including size*'' (65 FR 30722) (emphasis added). Thus, the agency reconfirmed the importance of the message area requirement in the advanced air bag final rule.

The intent of FMVSS No. 208 is that the warning or alert message fill the message area (*see* 61 FR 60206 at 60210 (November 27, 1996)). Not filling the message area would make purposeless the specification. The label on the dashboard has a message area that is 37 percent below the required 30 cm^2. The air bag alert label on the sun visor has a message area that is 40 percent below the required 20 cm^2. These are significant reductions in message area.

Having reductions of this magnitude is equivalent to not filling the message area. The agency has provided figures in FMVSS No. 208 that show the message text covers the majority of the message area.

MMSC hypothesized that there is enhanced label perception by the consumer because the size of the bilingual label is larger than the English-only label. The bilingual label is addressed in the **Federal Register** notice quoted above. In addition, the message area requirements in FMVSS No. 208 enhance the effectiveness of labels by not only impacting the label size, but also the appearance of the text message. If the agency were only concerned with the size of the label, we would have limited our requirement to label size.

Second, it states that the bilingual label will reach a larger audience. This is not relevant to the message area requirement. The label can still be bilingual but the minimum English message area is specified in the regulatory text. Had the Agency required a bilingual label, it would have been logical to specify the same 30 cm^2 message area for both languages.

Third, it states the font size, font color, and letter spacing remains the same as the English-only complying version. The font size and letter spacing are not covered by regulation and thus are not relevant to the message area requirement. The black font color is required, but it is not relevant to the message area requirement. NHTSA intended the message area to be filled. Therefore, the font and spacing should be chosen with that as a consideration along with owner ease of use.

Fourth, it states that the labels meet all other label requirements. This is not relevant to the message area requirement.

Fifth, it believes dash labels have already been removed. Again this is not relevant to the message area requirement.

Finally, it states it has received no customer complaints. NHTSA is not surprised that there are no customer complaints since the labels do not affect the operation of the vehicle.

The sun visor alert label is a permanent label that will still be on the vehicles when they enter the used vehicle market. New owners, as well as the current owners, should be afforded the opportunity to have the air bag warning labels in the minimum format specified by FMVSS No. 208, which was deemed to be the most effective through focus group testing.

The label on the dashboard, although temporary on a new vehicle, is important to NHTSA. Since all the labels had insufficient message area, a remedy for this label will help reinforce the air bag message for the owners.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety for the sun visor air bag alert label or for the label on the dashboard. Accordingly, in regard to these two labels, its petition is hereby denied. MMSC must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

The sun visor air bag warning label has a message area that is 10 percent below the required 30 cm^2. Even though the label minimum format is not met, NHTSA believes in this case that the owner and future owners will have a message size that is acceptable. Since this label contains the actual owner guidance, NHTSA prefers to keep the current label intact rather than require a 10 percent increase in message area. In addition, the label on the dashboard will have to be remedied and it contains the same information as the sun visor air bag warning label. NHTSA expects the remedy will have the effect of reemphasizing the warning on the visor label.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the sun visor air bag warning labeling noncompliance portion of its petition is inconsequential to motor vehicle safety. Accordingly, we grant its petition on this issue.

Authority: 49 U.S.C. 30118(d) and 30120(h); delegations of authority at CFR 1.50 and 501.8.

Issued on: January 19, 2005.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–1432 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17679; Notice 2]

General Motors Corporation, Denial of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM), has determined that certain 2004 model year vehicles that it produced do not comply with S5.1 of 49 CFR 571.124, Federal Motor Vehicle Safety Standard (FMVSS) No. 124, ''Accelerator control systems.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on May 19, 2004, in the **Federal Register** (69 FR 28977). NHTSA received no comments.

Approximately 19,924 model year 2004 Cadillac SRX, Cadillac XLR, and Pontiac Grand Prix vehicles are affected. S5.1 and S5.3 of FMVSS No. 124 require that there shall be at least two sources of energy capable of returning the throttle to the idle position from any accelerator position or speed whenever the driver removes the opposing actuating force. In the event of failure of one source of energy by a single severance or disconnection, the return to idle shall occur within three seconds for any vehicle that is exposed to ambient air at −18 °C to −40 °C.

However, for the subject vehicles, in the event of failure of either of the two Electronic Throttle Control (ETC) Pedal return springs at ambient temperatures of −30 °C to −40 °C for the Grand Prix and XLR and −10 °C to −40 °C for the SXR, the engine in some of these

vehicles may not return to idle within the time limits specified by S5.3.

GM believes that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

Vehicle Controllability: A number of conditions must occur for the noncompliance to occur. A return spring must be severed, the stack-up of tolerances in the ETC Pedal Position Sensor must exist, the vehicle must have soaked at an ambient temperature of −30° C to −40° C for the Grand Prix and XLR and −10 °C to −40 °C for the SXR, and the customer must drive the vehicle prior to the vehicle interior warming up. In the extremely low likelihood of all of these conditions existing, the condition would occur upon the first application of the throttle pedal. The vehicle would continue to be controllable by steering and braking, and the ETC Pedal assembly would return to normal operation once the passenger compartment warmed up.

Pedal Assembly is Protected: When FMVSS No. 124 was established in 1973, the accelerator control systems of vehicles consisted of a mechanical connection between the accelerator pedal and the engine's carburetor. The throttle return springs required by FMVSS No. 124 were typically part of the carburetor, and subject to the harsh engine environment. The requirements of S5.1 were established to ensure that if one of those springs in that environment were to fail, the engine would return to idle in a timely manner.

The ETC Accelerator Pedal Module in the subject vehicles consists of the accelerator pedal at the end of the accelerator pedal lever. The lever is connected to the ETC Pedal Sensor shaft, and is returned to the idle position by two return springs. The ETC Pedal Sensor provides two redundant signals to the engine control module to indicate accelerator pedal position. The ETC Accelerator Pedal Module is located entirely within the passenger compartment of the vehicle. The return springs are in a protected area under the instrument panel, and are not subject to the harsh environment of the engine compartment.

Condition Requires Failed Return Spring: The condition that is described can only occur if one of the two return springs is severed or disconnected. The springs in the subject Accelerator Pedal Module, however, have extremely high reliability and are not likely to fail in the real world.

Durability Testing: The ETC Accelerator Pedal Module is designed for a service life of at least 100,000 miles or 10 years working life for passenger car application. The Minimum Typical Predicted Usage Profile of the Component Technical Specification states that the Accelerator Pedal mechanism may be subject to 35,000,000 dithers / 70,000,000 sensor direction changes. The GM Test Procedure TP3750, Accelerator Pedal Lab Durability Cycling Test, that is used during the development and validation of this system, subjects these parts to 2 million cycles, an equivalent usage greater than 6 lives for an automatic transmission passenger vehicle and 3 lives for a manual transmission passenger vehicle. There were no accelerator pedal return spring failures after testing multiple samples to 10 million cycles during the durability testing that was performed on the ETC Accelerator Pedal Module for the subject vehicles.

Condition Requires Extreme Temperatures, Pedal Assembly Warms Quickly: The root cause of the condition is an increase in friction that may occur on some ETC Accelerator Pedal Modules due to a stack-up of tolerances, but only when the Module is subjected to extreme ambient temperatures. All tests at temperatures above those extremes resulted in full compliance with the FMVSS No. 124 time limits for all pedal assemblies tested. Therefore, the ambient temperatures required for the possibility of the noncompliance to exist are severe. Even if a vehicle with a disconnected return spring soaked under the necessary harsh conditions for a sufficient time, the potential for the noncompliance to occur would exist for only a short time, because the pedal assembly would warm up quickly with activation of the vehicle heating system.

Warranty Data: GM has reviewed warranty data for these 2004 vehicles, as well as complaint data. GM is unaware of any data suggesting the subject condition is a real world safety issue.

Prior NHTSA Decision: On August 3, 1998, NHTSA granted a petition for decision of inconsequential noncompliance to GM for 1997 Chevrolet Corvettes that failed to meet the requirements of FMVSS No. 124, with respect to the requirement to return to idle in less than 3 seconds at −40 °C.

Additional information was requested from GM. One of the factors considered in the prior petition grant (63 FR 41320, August 3, 1998) was that the accelerator control system performance of the Corvettes improved after several thousand application cycles of the accelerator pedal.

However, in the present case, GM and its pedal assembly supplier conducted several tests of samples from the subject population attempting to demonstrate this kind of improvement by cycling pedal assemblies at ambient and cold temperatures, but the throttle return performance was not significantly improved.

Six accelerator pedal assemblies were taken from GM vehicles with up to 11,553 accumulated driving miles and tested on a fixture with one return spring disconnected at −40 °C and higher temperatures. Checking times to return from 10 percent, 50 percent, and 100 percent wide-open throttle positions to idle, two of the assemblies returned to idle within three seconds. The four others had not fully returned within one minute.

The worst performer of these assemblies was installed in a vehicle for testing on a dynamometer in a cold chamber. The driver accelerated to 70 mph and removed his foot from the accelerator control pedal. Vehicle speed reduced slowly. Tapping or pumping the accelerator pedal had little affect. Side taps applied to the pedal improved return time such that the pedal returned within 40–50 seconds. When the driver used his foot to lift up the pedal, the idle condition was achieved within five seconds.

The standard requires that a vehicle's accelerator control system, with one return spring disconnected, return to idle in cold ambient temperatures within three seconds. A driver who starts a vehicle affected by the noncompliance in these conditions and begins driving it soon thereafter could be unable to control vehicle speed and experience a loss of control.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, GM's petition is denied.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: January 19, 2005.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–1433 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Report on Research Activities; Request for Comments

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: The Norman Y. Mineta Research and Special Programs Improvement Act of 2004 (Public Law 108–426) will disestablish the Department of Transportation's Research and Special Programs Administration (RSPA). In its place, two new Federal agencies will be established—the Research and Innovative Technology Administration (RITA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA). These new organizations will be effective no later than February 28, 2005.

Section 4(g) of the Act directs the incoming RITA Administrator to prepare a report to Congress, due March 30, 2005, on the research activities and priorities of the Department of Transportation. As a part of the stakeholder review process, the

Department of Transportation is soliciting comments from Federal, state, private sector, and not-for-profit institutions on the topics outlined below.

ADDRESSES: Please submit all comments electronically to *RitaReport@rspa.dot.gov* or fax to (202) 366–3671. The deadline for comments is February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Marchessault, RSPA, by telephone at (202) 366–4434 or Fax: (202) 366–3671.

SUPPLEMENTARY INFORMATION: RITA is a new Department of Transportation (DOT) organization dedicated to advancing the DOT's priorities for transportation innovation, research, and education. RITA will integrate the existing intermodal research and development functions of the RSPA Office of Innovation, Research, and Education and the Secretary's Office of Intermodalism.

In addition, RITA also will incorporate the Volpe National Transportation Systems Center in Cambridge, Massachusetts; the Transportation Safety Institute in Oklahoma City; and the Bureau of Transportation Statistics in its entirety.

Report to Congress

On November 30, 2004, President Bush signed the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108–426). Section 4(g) of the Act directs the RITA Administrator to prepare a report on the research activities of the Department of Transportation, for delivery to the Committee on Transportation and Infrastructure, the Committee on Science of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate. This report is due March 30, 2005, 120 days after enactment.

The report shall include the following information:

- A summary of the mission and strategic goals of the new RITA Administration;
- A prioritized list of the research and development activities that the Department intends to pursue over the next five (5) years;
- A description of the primary purposes for conducting such R&D activities such as reducing traffic congestion, improving mobility, and promoting safety;
- An estimate of the funding levels needed to implement such R&D activities for the current fiscal year; and
- Additional information the RITA Administrator considers appropriate.

In developing the report, the RITA Administrator must also:

- Solicit input from a wide range of stakeholders;
- Take into account how the research and development activities of other Federal, state, private sector, and not-for-profit institutions contribute to the achievement of the desired purposes; and
- Address methods to avoid unnecessary duplication of efforts in achieving such purposes.

As a part of the stakeholder review process, the Department of Transportation is soliciting comments from Federal, state, private sector, and not-for-profit institutions on these topics. The Department is using a variety of venues to solicit comments by stakeholders. This **Federal Register** Notice is one method for receiving comment. In particular, the Department encourages comments on the following topics:

Identification of Priorities

- How do we establish DOT transportation research priorities in an environment of limited resources?
- How do we balance research on long-term, high-risk and high-impact advances versus research with immediate transportation safety and mobility returns?

Research Duplication

- How do we identify and avoid unnecessary duplication in transportation-related technology research?
- How do we share information and learn about opportunities to benefit from others' research?

The Role of Stakeholders

- What on-going communications methods or processes might be established with stakeholders outside of the DOT to receive their advice and recommendations?
- What information resources can RITA utilize or create to leverage private sector advances into the DOT missions and goals?

We encourage your ideas on these topics, and on other related topics you may identify. The development of RITA, its roles, direction, and responsibilities, will be a methodical process of growth. It may not be possible to incorporate many of the ideas we receive in our Congressional report. However, all ideas and concerns identified will be considered for integration into our planning endeavors.

Issued in Washington, DC on January 14, 2005.

Thomas Marchessault,

Acting Associate Administrator, Office of Innovation, Research and Education, Research and Special Programs Administration.

[FR Doc. 05–1226 Filed 1–25–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub–No. 95)] [1]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation [Petition to Approve Settlement Agreement and Exempt Embraced Transactions]

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Board action with regard to settlement agreement and 6 related exemptions.

SUMMARY: Under 49 U.S.C. 11327, the Board finds that a settlement agreement that was entered into by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS) and Wheeling & Lake Erie Railway Company (W&LE), when implemented, will satisfy certain conditions imposed in *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998). Under 49 U.S.C. 10502 the Board grants the exemption authority sought by NS and W&LE pursuant to the settlement agreement.

The Settlement Agreement includes 7 elements.

Element #1 provides that W&LE will be granted overhead trackage rights,

[1] This notice embraces: STB Finance Docket No. 33388 (Sub-No. 96), *Wheeling & Lake Erie Railway Co.—Trackage Rights Exemption—Norfolk Southern Railway Co. Between Bellevue and Toledo, OH;* STB Finance Docket No. 33388 (Sub-No. 97), *Wheeling & Lake Erie Railway Co.—Trackage Rights Exemption—Norfolk Southern Railway Co. in Cleveland, OH;* STB Finance Docket No. 33388 (Sub-No. 98), *Norfolk Southern Railway Co.—Trackage Rights Exemption—Wheeling & Lake Erie Railway Co. Between Clairton, PA and Bellevue, OH;* STB Finance Docket No. 33388 (Sub-No. 99), *Wheeling & Lake Erie Railway Co.—Petition for Exemption—Purchase of the Toledo Pivot Bridge—Norfolk Southern Railway Co.;* STB Finance Docket No. 32516 (Sub-No. 1), *Wheeling & Lake Erie Railway Co.—Lease and Operation Exemption—Norfolk and Western Railway Co.'s Dock at Huron, OH;* and STB Finance Docket No. 32525 (Sub-No. 1), *Wheeling & Lake Erie Railway Co.—Trackage Rights Exemption—Norfolk and Western Railway.*

limited to one train per day per direction, between Bellevue (Yeomans), OH, at Milepost (MP) T–54.7 and Toledo (Manhattan Jct.), OH, at MP CS–1.30. Element #1 also provides that W&LE will be granted back-up haulage rights for overflow traffic. In STB Finance Docket No. 33388 (Sub-No. 96), the Board has granted an exemption under 49 U.S.C. 10502 for the Bellevue-Toledo trackage rights, which were originally sought in a responsive application in a rail consolidation proceeding, subject to the labor protective conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653, 664 (1980).

Element #2 provides that W&LE will purchase the Toledo Pivot Bridge, which is also known as the Maumee River Bridge (this is a railroad swing bridge that spans the Maumee River in Toledo, OH). In STB Finance Docket No. 33388 (Sub-No. 99), the Board has granted a 49 U.S.C. 10502 petition for exemption of the Toledo Pivot Bridge purchase transaction. Any employee affected by the Toledo Pivot Bridge purchase exempted in STB Finance Docket No. 33388 (Sub-No. 99) will be protected as required by section 10902(d), subject to the standards and procedures established in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR,* 2 S.T.B. 218 (1997), *aff'd in relevant part sub nom. Association of American Railroads* v. *STB,* 162 F.3d 101 (D.C. Cir. 1998).

Element #3 provides for a 10-year extension of W&LE's lease of NS's Huron Dock on Lake Erie. In STB Finance Docket No. 32516 (Sub-No. 1), the Board has accepted a 49 CFR 1180.2(d)(4) notice of exemption respecting the Huron Dock lease extension. Any employee affected by the Huron Dock lease extension exempted in STB Finance Docket No. 32516 (Sub-No. 1) will be protected by the labor protective conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Element #4 provides for a 10-year extension of W&LE's Bellevue-Huron Dock overhead trackage rights, by which W&LE accesses Huron Dock. These trackage rights run over the NS line between approximately MP B242 at Bellevue, OH, and approximately MP B229 at Berlin Heights, OH, and between approximately MP B232 at Shinrock, OH (on the Bellevue-Berlin Heights segment), and approximately MP HU12.2 at the Huron Dock connection in Huron, OH. In STB Finance Docket No. 32525 (Sub-No. 1), the Board has accepted a 49 CFR 1180.2(d)(4) notice of exemption respecting the Bellevue-Huron Dock trackage rights extension. Any employee affected by the trackage rights exempted in STB Finance Docket No. 32525 (Sub-No. 1) will be protected by the labor protective conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653, 664 (1980).

Element #5 provides that W&LE will be granted overhead trackage rights in the Cleveland, OH area between Berea, OH (at MP CD–194.2), and the Knob, OH (at MP GZ–488.13). In STB Finance Docket No. 33388 (Sub-No. 97), the Board has accepted a 49 CFR 1180.2(d)(7) notice of exemption for the Berea-Knob trackage rights. Any employee affected by the trackage rights exempted in STB Finance Docket No. 33388 (Sub-No. 97) will be protected by the labor protective conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653, 664 (1980).

Element #6 provides that NS will be granted overhead trackage rights between Clairton, PA (at MP 5.2), and Bellevue, OH (at MP H53.7), with certain rights of ingress and egress at Mingo Jct., OH, Jewett, OH, Bowerston, OH, and Orrville, OH. In STB Finance Docket No. 33388 (Sub-No. 98), the Board has accepted a 49 CFR 1180.2(d)(7) notice of exemption for the Clairton-Bellevue trackage rights. Any employee affected by the trackage rights exempted in STB Finance Docket No. 33388 (Sub-No. 98) will be protected by the labor protective conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653, 664 (1980).

Element #7 provides that, to allow NS to access a new trailer parking facility in the Maple Heights area (Maple Heights is located a few miles southeast of Cleveland), NS will be granted the right to create and use a second road at-grade crossing over W&LE's Cleveland Subdivision line at MP 8.67 under the same terms and conditions that govern NS's use of the existing road at-grade crossing over the W&LE line at MP 9.03. Element #7 further provides for NS and W&LE to negotiate a broader agreement regarding operations in the Maple Heights area. NS and W&LE are currently evaluating two options, both of which involve the lease, by NS, of freight rights on the Randall Secondary.

DATES: The approval of the Settlement Agreement, and also the 6 related exemptions, will be effective on February 25, 2005. Petitions for stay must be filed by February 7, 2005. Petitions for reconsideration must be filed by February 15, 2005.

ADDRESSES: Send an original and 10 copies of any pleading referring to STB Finance Docket No. 33388 (Sub-No. 95) and also, if appropriate, referring to any one or more of the six embraced dockets, to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any pleading to NS's representative (Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, LLP, 888 Seventeenth Street, NW., Suite 700, Washington, DC 20006) and also send one copy of any pleading to W&LE's representative (William C. Sippel, Esq., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, 202–565–1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail: *asapdc@verizon.net;* telephone: 202–306–4004). [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 19, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1400 Filed 1–25–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34633]

Wisconsin & Southern Railroad Co.—Acquisition Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 10902 for Wisconsin & Southern Railroad Co. (WSOR), a Class II carrier, to purchase and lease from the Union Pacific Railroad Company and operate approximately 14 miles of rail line between milepost 1.2 at Sheboygan and milepost 14.95 at Plymouth, WI.

DATES: The exemption will be effective on February 6, 2005. Petitions to stay must be filed by January 24, 2005. Petitions to reopen must be filed by January 31, 2005.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34633 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative, John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail: *asapdc@verizon.net*; telephone: (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 19, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1399 Filed 1–25–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled ''(MA) Loans in Areas Having Special Flood Hazards (12 CFR 22)''.

DATES: You should submit written comments by: March 28, 2005.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0202, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA) Loans in Areas Having Special Flood Hazards—12 CFR 22.

OMB Number: 1557–0202.

Description: This submission covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests only that OMB renew its approval of the information collection. The regulation requires national banks to make disclosures and keep records regarding whether a property securing a loan is located in a special flood hazard area.

This information collection is required by section 303(a) and title V of the Riegle Community Development and Regulatory Improvement Act, Pub. L. No. 103–325, title V, 108 Stat. 2160, the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968 (12 U.S.C. 4104a and 4104b) and the Flood Disaster Protection Act of 1973 (12 U.S.C. 4012a and 4106(b)), and by OCC regulations implementing those statutes.

The information collection requirements are contained in 12 CFR part 22.

Section 22.6 requires a national bank to use and maintain a copy of the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (FEMA).

Section 22.7 requires a national bank or its loan servicer, if a borrower has not obtained flood insurance, to notify the borrower to obtain adequate flood insurance coverage or the bank or servicer will purchase flood insurance on the borrower's behalf.

Section 22.9 requires a national bank making a loan secured by a building or a mobile home to advise the borrower and the loan servicer that the property is, or is not, located in a special flood hazard area, if flood insurance is available under the National Flood Insurance Program, and if Federal disaster relief may be available in the event of flooding. The bank must maintain a record of the borrower and loan servicer's receipts of these notices.

Section 22.10 requires a national bank making a loan secured by a building or a mobile home located in a special flood hazard area to notify FEMA of the identity of the servicer, and of any change in servicers.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,300.

Total Annual Responses: 230,000.

Frequency of Response: On occasion.

Total Annual Burden Hours: 58,650.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 18, 2005.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 05–1361 Filed 1–25–05; 8:45 am]

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Federal Register

Wednesday,
January 26, 2005

Part II

Department of State

Office of Oceans Affairs; New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR; Notice

DEPARTMENT OF STATE

[I.D. 010705D]

Office of Oceans Affairs; New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

AGENCY: Office of Oceans Affairs, Department of State.

ACTION: Notice.

SUMMARY: At its Twenty-Third Meeting in Hobart, Tasmania, from October 25 to November 5, 2004, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twenty-Third meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR Web site at *http://www.ccamlr.org*. This notice, therefore, together with the U.S. regulations referenced under the Supplementary Information, provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Hunter H. Cashdollar, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, DC 20520; tel: (202) 647–3947; fax: (202) 647–9099; e-mail: *cashdollarhh@state.gov*.

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Conventional area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on: Purpose and scope; Definitions; Relationship to other treaties, conventions, laws and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery; Exploratory fisheries; Reporting and record keeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

The Commission agreed that the following conservation measures will remain in force in 2004/05: Compliance: 10–01 (1998), 10–03 (2002), and 10–07 (2003); General fishery matters: 21–01 (2002), 22–01 (1986), 22–02 (1984), 22–03 (1990), 23–02 (1993), 23–03 (1991), 23–04 (2000), 23–05 (2000), 24–01 (2003), 25–01 (1996), 25–02 (2003), and 25–03 (2003); Fishery Regulations: 31–01 (1986), 32–01 (2001), 32–02 (1998), 32–03 (1998), 32–04 (1986), 32–05 (1986), 32–06 (1985), 32–07 (1999), 32–08 (1997), 32–10 (2002), 32–11 (2002), 32–12 (1998), 32–13 (2003), 32–14 (2003), 32–15 (2003), 32–16 (2003), 32–17 (2003), 33–01 (1995), 41–03 (1999), 51–01 (2002), 51–02 (2002) and 51–03 (2002).

At its twenty-third meeting in Hobart, Tasmania, the Commission agreed that the following resolutions will remain in force in 2004/05: Resolutions 7/IX, 10/XII, 14/XIX, 15/XXII, 16/XIX, 17/XX, 18/XXI, 19/XXI AND 20/XXII.

New and Revised Conservation Measures. The Commission revised the following conservation measures at its twenty-third meeting: Compliance: 10–02 (2001), 10–04 (2002), 10–05 (2003), 10–06 (2002); General Fishery Matters: 21–02 (2002), 23–01 (2003), 23–06 (2002), and 24–02 (2003); Protected Areas: 90–01 (2000), 91–02 (2000), and 91–03 (2000).

In addition, twenty-nine Conservation Measures and three Resolutions were adopted at the twenty-third meeting: (For further information, see the CCAMLR Web site at *http://www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2004/2005), or contact the Commission at the CCAMLR Secretariat, PO Box 213, North Hobart, Tasmania 7002, Australia. Tel: (61) 3–6234–9965.)

Conservation Measures and Resolutions Adopted at CCAMLR–XXIII

Conservation Measure 10–02 (2004) [1] [2]

Licensing and Inspection Obligations of Contracting Parties With Regard to Their Flag Vessels Operating in the Convention Area

Species all
Area all
Season all
Gear all

1. Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a licence [3] that the Contracting Party has issued setting forth the specific areas, species and time periods for which such fishing is authorised and all other specific conditions to which the fishing is subject to give effect to CCAMLR conservation measures and requirements under the Convention.

2. A Contracting Party may only issue such a licence to fish in the Convention Area to vessels flying its flag, if it is satisfied of its ability to exercise its responsibilities under the Convention and its conservation measures, by requiring from each vessel, *inter alia*, the following:

(i) Timely notification by the vessel to its Flag State of exit from and entry into any port;

(ii) Notification by the vessel to its Flag State of entry into the Convention Area and movement between areas, subareas/divisions;

(iii) Reporting by the vessel of catch data in accordance with CCAMLR requirements;

(iv) Operation of a VMS system on board the vessel in accordance with Conservation Measure 10–04.

3. Each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

- Name of the vessel
- Time periods authorised for fishing (start and end dates)
- Area(s) of fishing
- Species targeted
- Gear used.

4. From 1 August 2005, each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

(i) Name of fishing vessel (any previous names if known), [4] registration number, [5] IMO number (if issued), external markings and port of registry;

(ii) The nature of the authorisation to fish granted by the Flag State, specifying time periods authorised for fishing (start and end dates), area(s) of fishing, species targeted and gear used;

(iii) Previous flag (if any);[4]
(iv) International Radio Call Sign;
(v) Name and address of vessel's owner(s), and any beneficial owner(s) if known;
(vi) Name and address of licence owner (if different from vessel owner(s));
(vii) Type of vessel;
(viii) Where and when built;
(ix) Length (m);
(x) Colour photographs of the vessel which shall consist of:
• One photograph not smaller than 12 × 7 cm showing the starboard side of the vessel displaying its full overall length and complete structural features;
• One photograph not smaller than 12 × 7 cm showing the port side of the vessel displaying its full overall length and complete structural features;
• One photograph not smaller than 12 × 7 cm showing the stern taken directly from astern;
(xi) Where applicable, in accordance with Conservation Measure 10–04, details of the implementation of the tamper-proof requirements of the satellite monitoring device installed on board.

5. From 1 August 2005, each Contracting Party shall, to the extent practicable, also provide to the Secretariat at the same time as submitting information in accordance with paragraph 4, the following additional information in respect to each fishing vessel licensed:
(i) Name and address of operator, if different from vessel owners;
(ii) Names and nationality of master and, where relevant, of fishing master;
(iii) Type of fishing method or methods;
(iv) Beam (m);
(v) Gross registered tonnage;
(vi) Vessel communication types and numbers (INMARSAT A, B and C numbers);
(vii) Normal crew complement;
(viii) Power of main engine or engines (kW);
(ix) Carrying capacity (tonnes), number of fish holds and their capacity (m^3);
(x) Any other information in respect of each licensed vessel they consider appropriate (*e.g.* ice classification) for the purposes of the implementation of the conservation measures adopted by the Commission.

6. Contracting Parties shall communicate without delay to the Secretariat any change to any of the information submitted in accordance with paragraphs 3, 4 and 5.

7. The Executive Secretary shall place a list of licensed vessels on the CCAMLR Web site.

8. The licence or an authorised copy of the licence must be carried by the fishing vessel and must be available for inspection at any time by a designated CCAMLR inspector in the Convention Area.

9. Each Contracting Party shall verify, through inspections of all of its fishing vessels at the Party's departure and arrival ports, and where appropriate, in its Exclusive Economic Zone, their compliance with the conditions of the licence as described in paragraph 1 and with the CCAMLR conservation measures. In the event that there is evidence that the vessel has not fished in accordance with the conditions of its licence, the Contracting Party shall investigate the infringement and, if necessary, apply appropriate sanctions in accordance with its national legislation.

10. Each Contracting Party shall include in its annual report pursuant to paragraph 12 of the CCAMLR System of Inspection, steps it has taken to implement and apply this conservation measure; and may include additional measures it may have taken in relation to its flag vessels to promote the effectiveness of CCAMLR conservation measures.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.
[2] Except for waters adjacent to the Prince Edward Islands.
[3] Includes permit and authorisation.
[4] In respect of any vessel reflagged within the previous 12 months, any information on the details of the process of (reasons for) previous deregistration of the vessel from other registries, if known.
[5] National registry number.

Conservation Measure 10–04 (2004)

Automated Satellite-Linked Vessel Monitoring Systems (VMS)

Species all except krill
Area all
Season all
Gear all

The Commission, Recognising that in order to promote the objectives of the Convention and further improve compliance with the relevant conservation measures,

Convinced that illegal, unreported and unregulated (IUU) fishing compromises the objective of the Convention,

Recalling that Contracting Parties are required to cooperate in taking appropriate action to deter any fishing activities which are not consistent with the objective of the Convention,

Mindful of the rights and obligations of Flag States and Port States to promote the effectiveness of conservation measures,

Wanting to reinforce the conservation measures already adopted by the Commission,

Recognising the obligations and responsibilities of Contracting Parties under the Catch Documentation Scheme for *Dissostichus* spp. (CDS),

Recalling provisions as made under Article XXIV of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures, hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall ensure that its fishing vessels, licensed [1] in accordance with Conservation Measure 10–02, are equipped with a satellite-linked vessel monitoring device allowing for the continuous reporting of their position in the Convention Area for the duration of the licence issued by the Flag State. The vessel monitoring device shall automatically communicate at least every four hours to a land-based fisheries monitoring centre (FMC) of the Flag State of the vessel the following data:
(i) Fishing vessel identification;
(ii) The current geographical position (latitude and longitude) of the vessel, with a position error which shall be less than 500 m, with a confidence interval of 99%;
(iii) The date and time (expressed in UTC) of the fixing of the said position of the vessel;
(iv) The speed and course of the vessel.

2. The implementation of vessel monitoring device(s) on vessels while participating only in a krill fishery is not currently required.

3. Each Contracting Party as a Flag State shall ensure that the vessel monitoring device(s) on board its vessels are tamper proof, *i.e.* are of a type and configuration that prevent the input or output of false positions, and that are not capable of being over-ridden, whether manually, electronically or otherwise. To this end, the on-board satellite monitoring device must:
(i) Be located within a sealed unit;
(ii) Be protected by official seals (or mechanisms) of a type that indicate whether the unit has been accessed or tampered with.

4. In the event that a Contracting Party has information to suspect that an on-board vessel monitoring device does not

meet the requirements of paragraph 3, or has been tampered with, it shall immediately notify the Secretariat and the vessel's Flag State.

5. Each Contracting Party shall ensure that its FMC receives Vessel Monitoring System (VMS) reports and messages, and that the FMC is equipped with computer hardware and software enabling automatic data processing and electronic data transmission. Each Contracting Party shall provide for backup and recovery procedures in case of system failures.

6. Masters and owners/licensees of fishing vessels subject to VMS shall ensure that the vessel monitoring device on board their vessels within the Convention Area is at all times fully operational as per paragraph 1, and that the data are transmitted to the Flag State. Masters and owners/licensees shall in particular ensure that:

(i) VMS reports and messages are not altered in any way;

(ii) The antennae connected to the satellite monitoring device are not obstructed in any way;

(iii) The power supply of the satellite monitoring device is not interrupted in any way;

(iv) The vessel monitoring device is not removed from the vessel.

7. A vessel monitoring device shall be active within the Convention Area. It may, however, be switched off when the fishing vessel is in port for a period of more than one week, subject to prior notification to the Flag State, and if the Flag State so desires also to the Secretariat, and providing that the first position report generated following the repowering (activating) shows that the fishing vessel has not changed position compared to the last report.

8. In the event of a technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, the master or the owner of the vessel, or their representative, shall communicate to the Flag State every six hours, and if the Flag State so desires also to the Secretariat, starting at the time that the failure or the non-functioning was detected or notified in accordance with paragraph 13, the up-to-date geographical position of the vessel by electronic means (e-mail, facsimile, telex, telephone message, radio).

9. Vessels with a defective vessel monitoring device shall take immediate steps to have the device repaired or replaced as soon as possible and, in any event, within two months. If the vessel during that time returns to port, it shall not be allowed by the Flag State to commence a further fishing trip in the Convention Area without having the defective device repaired or replaced.

10. When the Flag State has not received for 12 hours data transmissions referred to in paragraphs 1 and 8, or has reasons to doubt the correctness of the data transmissions under paragraphs 1 and 8, it shall as soon as possible notify the master or the owner or the representative thereof. If this situation occurs more than two times within a period of one year in respect of a particular vessel, the Flag State of the vessel shall investigate the matter, including having an authorised official check the device in question, in order to establish whether the equipment has been tampered with. The outcome of this investigation shall be forwarded to the CCAMLR Secretariat within 30 days of its completion.

11. Each Contracting Party shall forward VMS reports and messages received, pursuant to paragraph 1, to the CCAMLR Secretariat as soon as possible: [2, 3]

(i) But not later than four hours after receipt for those exploratory longline fisheries subject to conservation measures adopted at CCAMLR–XXIII; or

(ii) Following departure from the Convention Area for all other fisheries.

12. Without prejudice to its responsibilities as a Flag State, if the Contracting Party so desires, it shall ensure that each of its vessels communicates the reports referred to in paragraph 11 in parallel to the CCAMLR Secretariat.

13. With regard to paragraphs 8 and 11(i), each Contracting Party shall, as soon as possible but no later than two working days following detection or notification of technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, forward the geographical positions of the vessel to the Secretariat, or shall ensure that these positions are forwarded to the Secretariat by the master or the owner of the vessel, or their representative.

14. Each Flag State shall ensure that VMS reports and messages transmitted by the Contracting Party or its fishing vessels to the CCAMLR Secretariat, are in a computer-readable form in the data exchange format set out in Annex 10–04/A.

15. Each Flag State shall in addition notify the CCAMLR Secretariat as soon as possible of each entry to and exit from the Convention Area by each of its fishing vessels in the format outlined in Annex 10–04/A.

16. Each Flag State shall notify the name, address, e-mail, telephone and facsimile numbers, as well as the address of electronic communication of the relevant authorities of their FMC to the CCAMLR Secretariat before 1 January 2005 and thereafter any changes without delay.

17. In the event that the CCAMLR Secretariat has not, for 48 consecutive hours, received the data transmissions referred to in paragraph 11(i), it shall promptly notify the Flag State of the vessel and require an explanation. The CCAMLR Secretariat shall promptly inform the Commission if the data transmissions at issue, or the Flag State explanation, are not received from the Contracting Party within a further five working days.

18. The CCAMLR Secretariat and all Parties receiving data shall treat all VMS reports and messages received under paragraph 11 or paragraphs 19, 20, 21 or 22 in a confidential manner in accordance with the confidentiality rules established by the Commission as contained in Annex 10–04/B. Data from individual vessels shall be used for compliance purposes only, namely for:

(i) Active surveillance presence, and/or inspections by a Contracting Party in a specified CCAMLR subarea or division; or

(ii) The purposes of verifying the content of a *Dissostichus* Catch Document (DCD).

19. The CCAMLR Secretariat shall place a list of vessels submitting VMS reports and messages pursuant to this conservation measure on a password-protected section of the CCAMLR Web site. This list shall be divided into subareas and divisions, without indicating the exact positions of vessels, and be updated when a vessel changes subarea or division. The list shall be posted daily by the Secretariat, establishing an electronic archive.

20. VMS reports and messages (including vessel locations), for the purposes of paragraph 18(i) above, may be provided by the Secretariat to a Contracting Party other than the Flag State without the permission of the Flag State only during active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection and according to the time frames set out in paragraph 11. In this case, the Secretariat shall provide VMS reports and messages, including vessel locations over the previous 10 days, for vessels actually detected during surveillance, and/or inspection by a Contracting Party, and VMS reports and messages (including vessel locations) for all vessels within 100 n miles of that same location. The Flag State(s) concerned shall be provided by the Party conducting the active surveillance, and/or inspection, with a report including name of the vessel or

aircraft on active surveillance, and/or inspection under the CCAMLR System of Inspection, and the full name(s) of the CCAMLR inspector(s) and their ID number(s). The Parties conducting the active surveillance, and/or inspection will make every reasonable effort to make this information available to the Flag State(s) as soon as possible.

21. A Party may contact the Secretariat prior to conducting active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection, in a given area and request VMS reports and messages (including vessel locations), for vessels in that area. The Secretariat shall provide this information only with the permission of the Flag State for each of the vessels and according to the time frames set out in paragraph 11. On receipt of Flag State permission the Secretariat shall provide regular updates of positions to the Contracting Party for the duration of the active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection.

22. A Contracting Party may request actual VMS reports and messages (including vessel locations) from the Secretariat for a vessel when verifying the claims on a DCD. In this case the Secretariat shall provide that data only with Flag State permission.

23. The CCAMLR Secretariat shall annually, before 30 September, report on the implementation of and compliance with this conservation measure to the Commission.

[1] Includes vessels licensed under French domestic law and vessels licensed under South African domestic law.

[2] This paragraph does not apply to vessels licensed under French domestic law in the EEZs surrounding Kerguelen and Crozet Islands.

[3] This paragraph does not apply to vessels licensed under South African domestic law in the EEZs surrounding Prince Edward Islands.

Annex 10–04/A

VMS Data Format

'Position', 'Exit' and 'Entry' Reports/ Messages

Data element Field code.
Mandatory/Optional Remarks.
Start record SR M System detail; indicates start of record.
Address AD M Message detail; destination; 'XCA' for CCAMLR.
Sequence number SQ M [1] Message detail; message serial number in current year.
Type of message TM [2] M Message detail; message type, 'POS' as position report/ message to be communicated by VMS or other means by vessels with a defective satellite tracking device.
Radio call sign RC M Vessel registration detail; international radio call sign of the vessel.
Trip number TN O Activity detail; fishing trip serial number in current year.
Vessel name NA M Vessel registration detail; name of the vessel.
Contracting Party internal reference number IR O Vessel registration detail. Unique Contracting Party vessel number as ISO–3 Flag State code followed by number.
External registration number XR O Vessel registration detail; the side number of the vessel.
Latitude LA M [3] Activity detail; position.
Longitude LO M [3] Activity detail; position.
Latitude (decimal) LT M [4] Activity detail; position.
Longitude (decimal) LG M [4] Activity detail; position.
Date DA M Message detail; position date.
Time TI M Message detail; position time in UTC.
End of record ER M System detail; indicates end of the record.

[1] Optional in case of a VMS message.

[2] Type of message shall be 'ENT' for the first VMS message from the Convention Area as detected by the FMC of the Contracting Party, or as directly submitted by the vessel. Type of message shall be 'EXI' for the first VMS message from outside the Convention Area as detected by the FMC of the Contracting Party or as directly submitted by the vessel, and the values for latitude and Longitude are, in this type of message, optional. Type of message shall be 'MAN' for reports communicated by vessels with a defective satellite tracking device.

[3] Mandatory for manual messages.

[4] Mandatory for VMS messages.

Annex 10–04/B

Provisions on Secure and Confidential Treatment of Electronic Reports and Messages Transmitted Pursuant to Conservation Measure 10–04

1. Field of Application

1.1 The provisions set out below shall apply to all VMS reports and messages transmitted and received pursuant to Conservation Measure 10–04.

2. General Provisions

2.1 The CCAMLR Secretariat and the appropriate authorities of Contracting Parties transmitting and receiving VMS reports and messages shall take all necessary measures to comply with the security and confidentiality provisions set out in sections 3 and 4.

2.2 The CCAMLR Secretariat shall inform all Contracting Parties of the measures taken in the Secretariat to comply with these security and confidentiality provisions.

2.3 The CCAMLR Secretariat shall take all the necessary steps to ensure that the requirements pertaining to the deletion of VMS reports and messages handled by the Secretariat are complied with.

2.4 Each Contracting Party shall guarantee the CCAMLR Secretariat the right to obtain as appropriate, the rectification of reports and messages or the erasure of VMS reports and messages, the processing of which does not comply with the provisions of Conservation Measure 10–04.

3. Provisions on Confidentiality

3.1 All requests for data must be made to the CCAMLR Secretariat in writing.

3.2 In cases where the CCAMLR Secretariat is required to seek the permission of the Flag State before releasing VMS reports and messages to another Party, the Flag State shall respond to the Secretariat as soon as possible but in any case within two working days.

3.3 Where the Flag State chooses not to give permission for the release of VMS reports and messages, the Flag State shall, in each instance, provide a written report within 10 working days to the Commission outlining the reasons why it chooses not to permit data to be released. The CCAMLR Secretariat shall place any report so provided, or notice that no report was received, on a password-protected part of the CCAMLR Web site.

3.4 VMS reports and messages shall only be released and used for the purposes stipulated in paragraph 18 of Conservation Measure 10–04.

3.5 VMS reports and messages released pursuant to paragraphs 20, 21 and 22 of Conservation Measure 10–04 shall provide details of: name of vessel, date and time of position report, and latitude and longitude position at time of report.

3.6 Regarding paragraph 21 each inspecting Contracting Party shall make available VMS reports and messages and positions derived therefrom only to their inspectors designated under the CCAMLR System of Inspection. VMS reports and messages shall be transmitted to their inspectors no more than 48 hours prior to entry into the CCAMLR, subarea or division where surveillance is to be conducted by the Contracting Party. Contracting Parties must ensure that VMS reports and messages are kept confidential by such inspectors.

3.7 The CCAMLR Secretariat shall delete all the original VMS reports and messages referred to in section 1 from the database at the CCAMLR Secretariat by the end of the first calendar month following the third year in which the VMS reports and messages have originated. Thereafter the information

related to the catch and movement of the fishing vessels shall only be retained by the CCAMLR Secretariat, after measures have been taken to ensure that the identity of the individual vessels can no longer be established.

3.8 Contracting Parties may retain and store VMS reports and messages provided by the Secretariat for the purposes of active surveillance presence, and/or inspections, until 24 hours after the vessels to which the reports and messages pertain have departed from the CCAMLR subarea or division. Departure is deemed to have been effected six hours after the transmission of the intention to exit from the CCAMLR subarea or division.

4. Provisions on Security

4.1 Overview

4.1.1 Contracting Parties and the CCAMLR Secretariat shall ensure the secure treatment of VMS reports and messages in their respective electronic data processing facilities, in particular where the processing involves transmission over a network. Contracting Parties and the CCAMLR Secretariat must implement appropriate technical and organisational measures to protect reports and messages against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all inappropriate forms of processing.

4.1.2 The following security issues must be addressed from the outset:

- System access control: The system has to withstand a break-in attempt from unauthorised persons.
- Authenticity and data access control: The system has to be able to limit the access of authorised parties to a predefined set of data only.
- Communication security: It shall be guaranteed that VMS reports and messages are securely communicated.
- Data security: It has to be guaranteed that all VMS reports and messages that enter the system are securely stored for the required time and that they will not be tampered with.
- Security procedures: Security procedures shall be designed addressing access to the system (both hardware and software), system administration and maintenance, backup and general usage of the system.

4.1.3 Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing of the reports and the messages.

4.1.4 Security measures are described in more detail in the following paragraphs.

4.2 System Access Control

4.2.1 The following features are the mandatory requirements for the VMS installation located at the CCAMLR Data Centre:

- A stringent password and authentication system: each user of the system is assigned a unique user identification and associated password. Each time the user logs on to the system he/she has to provide the correct password. Even when successfully logged on the user only has access to those and only those functions and data that he/she is configured to have access to. Only a privileged user has access to all the data.
- Physical access to the computer system is controlled.
- Auditing: Selective recording of events for analysis and detection of security breaches.
- Time-based access control: access to the system can be specified in terms of times-of-day and days-of-week that each user is allowed to log on to the system.
- Terminal access control: Specifying for each workstation which users are allowed to access.

4.3 Authenticity and Data Access Security

4.3.1 Communication between Contracting Parties and the CCAMLR Secretariat for the purpose of Conservation Measure 10–04 shall use secure Internet protocols SSL, DES or verified certificates obtained from the CCAMLR Secretariat.

4.4 Data Security

4.4.1 Access limitation to the data shall be secured via a flexible user identification and password mechanism. Each user shall be given access only to the data necessary for his task.

4.5 Security Procedures

4.5.1 Each Contracting Party and the CCAMLR Secretariat shall nominate a security system administrator. The security system administrator shall review the log files generated by the software for which they are responsible, properly maintain the system security for which they are responsible, restrict access to the system for which they are responsible as deemed needed and in the case of Contracting Parties, also act as a liaison with the Secretariat in order to solve security matters.

Conservation Measure 10–05 (2004)

Catch Documentation Scheme for *Dissostichus* spp.

Species toothfish
Area all
Season all
Gear all

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. (CDS) will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the CDS,

Hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorised representative of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a

Dissostichus catch document (DCD) for the catch landed or transhipped on each occasion that it lands or transhipps *Dissostichus* spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed DCD. The landing of *Dissostichus* spp. without a catch document is prohibited.

4. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorisation to do so. Each Contracting Party shall provide DCD forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue DCD forms, in accordance with the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The DCD shall include the following information:

(i) The name, address, telephone and fax numbers of the issuing authority;

(ii) The name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) The reference number of the licence or permit, whichever is applicable, that is issued to the vessel;

(iv) The weight of each *Dissostichus* species landed or transhipped by product type, and

(a) By CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) By FAO statistical area, subarea or division if caught outside the Convention Area;

(v) The dates within which the catch was taken;

(vi) The date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped;

(vii) The name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing DCDs in respect of vessels are set forth in paragraphs A1 to A10 of Annex 10–05/A to this measure. The standard catch document is attached to the annex.

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated DCD(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. The import, export or re-export of *Dissostichus* spp. without a catch document is prohibited.

9. An export-validated DCD issued in respect of a vessel is one that:

(i) Includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 10–05/A to this measure;

(ii) Includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated DCD(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the information contained in a DCD or a re-export document the exporting State whose national authority validated the document(s) and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated DCDs and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues DCDs in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and e-mail addresses) responsible for issuing and validating DCDs.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the CDS, may require additional verification of catch documents by Flag States by using, *inter alia,* VMS, in respect of catches [1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If, following an examination under paragraph 10, questions under paragraph 11 or requests for additional verification of documents under paragraph 14, it is determined, after consultation with the States concerned, that a catch document is invalid, the import, export or re-export of *Dissostichus* spp. being the subject of the document is prohibited.

16. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

17. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

Annex 10–05/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) A four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued;

(ii) A three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the licence or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) The master shall ensure that the information specified in paragraph 6 of this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) If a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) If a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division and indicating whether the catch was caught in an EEZ or on the high seas, as appropriate;

(iv) The master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches [1] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraph 1 of Conservation Measure 10–04), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorisation to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available. The *Dissostichus* catch document will receive a confirmation number from the Flag State, only when it is convinced that the information submitted by the vessel fully satisfies the provisions of this conservation measure.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) In the case of a transhipment, the master shall confirm the transhipment obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is being transferred;

(ii) In the case of a landing, the master or authorised representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(iii) In the case of a landing, the master or authorised representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone;

(iv) In the event that the catch is divided upon landing, the master or authorised representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorised representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorised representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after each landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) The master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official of the Port State of landing or free trade zone who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of *Dissostichus* catch documents;

(ii) The master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade;

(iii) In the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorised representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) The exporter shall enter on each *Dissostichus* catch document the name

and address of the importer of the shipment and the point of import;

(iii) The exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document;

(iv) The exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document by a responsible official of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) The re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) The re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s);

(iv) The responsible official of the exporting state shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

The standard form for re-export is attached to this annex.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

***Dissostichus* Catch Document V 1.4**

Document Number Flag State Confirmation Number

Production Section

1. Issuing Authority of Document
Name Address Tel:
Fax:
2. Fishing Vessel Name Home Port & Registration Number Call Sign IMO/ Lloyd's Number (if issued)
3. Licence Number (if issued) Fishing dates for catch under this document
4. From:
5. To:
6. Description of Fish (Landed/Transhipped)
7. Description of Fish Sold
Species Type Estimated
Weight to be Landed (kg)
Area Caught*
Verified Weight Landed (kg)
Net Weight Sold (kg)
Recipient name, address, telephone, fax and signature.
Recipient Name:
Signature:
Address:
Tel:
Fax:
Species: TOP *Dissostichus eleginoides,* TOA *Dissostichus mawsoni*
Type: WHO Whole; HAG Headed and gutted; HAT Headed and tailed; FLT Fillet; HGT Headed, gutted, tailed; OTH Other (specify)
8. Landing/Transhipment Information: I certify that the above information is complete, true and correct. If any *Dissostichus* spp. was taken in the Convention Area, I certify that it was taken in a manner which is consistent with CCAMLR conservation measures:
Master of Fishing Vessel or Authorised Representative (print in block letters)
Signature and Date Landing/Transhipment
Port and Country/Area
Date of Landing/Transhipment
9. Certificate of Transhipments: I certify that the above information is complete, true and correct to the best of my knowledge. Master of Receiving Vessel Signature Vessel Name Call Sign IMO/ Lloyds Number (if issued)
Transhipment within a Port Area: countersignature by Port Authority if appropriate.
Name Authority Signature Seal (Stamp)
10. Certificate of Landing: I certify that the above information is complete, true and correct to the best of my knowledge.
Name Authority Signature Address Tel. Port of Landing Date of Landing Seal (Stamp)
11. *Export Section* 12. Exporter Declaration: I certify that the above information is complete, true and correct Description of Fish to the best of my knowledge.
Species Product
Type
Net Weight Name Address Signature
Export Licence (if issued)
13. Export Government Authority Validation: I certify that the above information is complete, true and correct to the best of my knowledge.
Name/Title Signature Date Seal (Stamp)
Country of export Export reference number
14. Import Section
Name of Importer Address
Point of Unlading: City State/Province Country
*Report FAO Statistical Area/Subarea/ Division where catch was taken and indicate whether the catch was taken on the high seas or within an EEZ.

***Dissostichus* Re-Export Document V1.1**

Re-Export Section Re-Exporting Country

1. Description of Fish
Species Type of Product Net Weight Exported (kg)
Dissostichus Catch Document Number Attached
Species: TOP *Dissostichus eleginoides,* TOA *Dissostichus mawsoni*
Type: WHO Whole; HAG Headed and gutted; HAT Headed and tailed; FLT Fillet; HGT Headed, gutted, tailed; OTH Other (specify)
2. Re-Exporter Certification: I certify that the above information is complete, true and correct to the best of my knowledge and that the above product comes from product certified by the attached *Dissostichus* Catch Document(s).
Name Address Signature Date Export Licence (if issued)
3. Re-Export Government Authority Validation: I certify that the above information is complete, true, and correct to the best of my knowledge.
Name/Title Signature Date Seal (Stamp)
4. Import Section
Name of Importer Address
Point of Unlading: City State/Province Country

Annex 10–05/B

The Use of the CDS Fund

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat, although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for routine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemised statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to make recommendations to the Commission on whether to fund special projects or special needs. The Review Panel will operate by email

intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

Conservation Measure 10–06 (2004)

Scheme To Promote Compliance by Contracting Party Vessels With CCAMLR Conservation Measures

Species all
Area all
Season all
Gear all

The Commission,

Convinced that illegal, unregulated and unreported (IUU) fishing compromises the primary objectives of the Convention,

Aware that a significant number of vessels registered to Parties and non-Parties are engaged in fishing operations in the Convention Area in a manner which diminishes the effectiveness of CCAMLR conservation measures,

Recalling that Parties are required to cooperate in taking appropriate action to deter any fishing activities which are not consistent with the objective of the Convention,

Resolved to reinforce its integrated administrative and political measures aimed at eliminating IUU fishing in the Convention Area,

Hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. At each annual meeting, the Commission will identify those Contracting Parties whose vessels have engaged in fishing activities in the Convention Area in a manner which has diminished the effectiveness of CCAMLR conservation measures in force, and shall establish a list of such vessels (IUU Vessel List), in accordance with the procedures and criteria set out hereafter.

2. This identification shall be documented, *inter alia,* on reports relating to the application of Conservation Measure 10–03, trade information obtained on the basis of the implementation of Conservation Measure 10–05 and relevant trade statistics such as FAO and other national or international verifiable statistics, as well as any other information obtained from Port States and/or gathered from the fishing grounds which is suitably documented.

3. Where a Contracting Party obtains information that vessels flying the flag of another Contracting Party have engaged in activities set out in paragraph 5, it shall submit a report containing this information, within 30 days of having become aware of it, to the Executive Secretary and the Contracting Party concerned. Contracting Parties shall indicate that the information is provided for the purposes of Conservation Measure 10–06.

4. For the purposes of this conservation measure, the Contracting Parties are considered as having carried out fishing activities that have diminished the effectiveness of the conservation measures adopted by the Commission if:

(i) The Parties do not ensure compliance by their vessels with the conservation measures adopted by the Commission and in force, in respect of the fisheries in which they participate that are placed under the competence of CCAMLR;

(ii) Their vessels are repeatedly included in the IUU Vessel List.

5. In order to establish the IUU Vessel List, evidence, gathered in accordance with paragraphs 2 and 3, shall be required that vessels flying the flag of the Contracting Party concerned have:

(i) Engaged in fishing activities in the CCAMLR Convention Area without a licence issued in accordance with Conservation Measure 10–02, or in violation of the conditions under which such licence would have been issued in relation to authorised areas, species and time periods; or

(ii) Did not record or did not declare their catches made in the CCAMLR Convention Area in accordance with the reporting system applicable to the fisheries they engaged in, or made false declarations; or

(iii) Fished during closed fishing periods or in closed areas in contravention of CCAMLR conservation measures; or

(iv) Used prohibited gear in contravention of applicable CCAMLR conservation measures; or

(v) Transhipped or participated in joint fishing operations with, supported or re-supplied other vessels identified by CCAMLR as carrying out IUU fishing activities (*i.e.* on the IUU Vessel List or in Conservation Measure 10–07); or

(vi) Engaged in fishing activities in a manner that undermines the attainment of the objectives of the Convention in waters adjacent to islands within the area to which the Convention applies over which the existence of State sovereignty is recognised by all Contracting Parties, in the terms of the statement made by the Chairman on 19 May 1980; or

(vii) Engaged in fishing activities contrary to any other CCAMLR conservation measures in a manner that undermines the attainment of the objectives of the Convention according to Article XXII of the Convention.

6. The draft IUU Vessel List, Provisional IUU Vessel List, Proposed IUU Vessel List and the IUU Vessel List shall contain the following details:

(i) Name of vessel and previous names, if any, during the preceding calendar year;

(ii) Flag of vessel and previous flags, if any, during the preceding calendar year;

(iii) Owner of vessel and previous owners, if any, during the preceding calendar year;

(iv) Operator of vessel and previous operators, if any, during the preceding calendar year;

(v) Call sign of vessel and previous call signs, if any, during the preceding calendar year;

(vi) Lloyds/IMO number;

(vii) Photographs of the vessel, where available;

(viii) Summary of activities which justify inclusion of the vessel on the List, together with references to all relevant documents informing of and evidencing those activities.

7. The Executive Secretary shall, before 1 July of each year, draw up a draft list of Contracting Party vessels that, on the basis of the information gathered in accordance with paragraphs 2 and 3, for the period beginning 30 days before the start of the previous CCAMLR annual meeting, the criteria defined in paragraph 4, and any other information that the Secretariat might have obtained in relation thereto, might be presumed to have carried out IUU fishing activities in the CCAMLR Convention Area. The Draft IUU Vessel List shall be distributed immediately to the Contracting Parties concerned.

8. Contracting Parties whose vessels are included in the Draft IUU Vessel List will transmit before 1 September to CCAMLR, their comments, as appropriate, including verifiable VMS data and other supporting information showing that the vessels listed have neither engaged in fishing activities in contravention of CCAMLR conservation measures nor had the possibility of being engaged in fishing activities in the Convention Area.

9. On the basis of the information received pursuant to paragraph 8, the Executive Secretary shall distribute the Draft IUU Vessel List and all comments received as a Provisional IUU Vessel List, which shall be transmitted before 1 October to all Contracting Parties and non-Contracting Parties cooperating with the Commission by participating in the Catch Documentation Scheme for *Dissostichus* spp. (CDS), together with the IUU Vessel List agreed at the previous CCAMLR annual meeting, and any evidence or documented information received since that meeting regarding vessels on the Provisional IUU Vessel List or IUU Vessel List.

10. Contracting Parties shall submit to the Executive Secretary any additional information which might be relevant for the establishment of the IUU Vessel List within 30 days of having become aware of such information and at the latest 30 days before the start of the CCAMLR meeting. A report containing this information shall be submitted in the format set out in paragraph 6, and Contracting Parties shall indicate that the information is provided for the purposes of Conservation Measure 10–06. The Secretariat shall collate all information received and, where this has not been provided in relation to a vessel, attempt to obtain the information in paragraphs 6(i) to (vii).

11. The Executive Secretary shall invite non-Contracting Parties cooperating with the Commission by participating in the CDS to submit any evidence or documented information regarding vessels on the Provisional IUU Vessel List and IUU Vessel List.

12. The Executive Secretary shall circulate to Contracting Parties, at the latest 30 days before the start of the CCAMLR annual meeting, all evidence or documented information received under paragraphs 10 and 11, together with any other evidence or documented information received in terms of paragraphs 2 and 3.

13. At each CCAMLR annual meeting, the Standing Committee on Implementation and Compliance (SCIC) shall, by consensus:

(i) Adopt a Proposed IUU Vessel List, following consideration of the Provisional IUU Vessel List and information and evidence circulated under paragraph 12. The Proposed IUU Vessel List shall be submitted to the Commission for approval;

(ii) Recommend to the Commission which, if any, vessels should be removed from the IUU Vessel List adopted at the previous CCAMLR annual meeting, following consideration of that List and information and evidence circulated under paragraph 12.

14. SCIC shall include vessels on the Proposed IUU Vessel List only if one or more of the criteria in paragraph 5 have been satisfied.

15. SCIC shall recommend that the Commission should remove vessels from the IUU Vessel List if the Contracting Party proves that:

(i) The vessel did not take part in IUU fishing activities described in paragraph 1; or

(ii) It has taken effective action in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity; or

(iii) The vessel has changed ownership and that the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; or

(iv) The Contracting Party has taken measures considered sufficient to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing.

16. In order to facilitate the work of SCIC and the Commission, the Secretariat shall prepare a paper for each CCAMLR annual meeting, summarising and annexing all the information, evidence and comments submitted in respect of each vessel to be considered.

17. On approval of the IUU Vessel List, the Commission shall request Contracting Parties whose vessels appear thereon to take all necessary measures to address these IUU fishing activities, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels, the nullification of the relevant catch documents and denial of further access to the CDS, and to inform the Commission of the measures taken in this respect.

18. Contracting Parties shall take all necessary measures, to the extent possible in accordance with their applicable laws and regulations, in order that:

(i) The issuance of a licence to vessels appearing in the IUU Vessel List to fish in the Convention Area is prohibited;

(ii) The issuance of a licence to vessels included in the IUU Vessel List to fish in waters under their fisheries jurisdiction is prohibited;

(iii) Fishing vessels, support vessels, mother-ships and cargo vessels flying their flag do not participate in any transhipment or joint fishing operations, support or re-supply vessels registered on the IUU Vessel List;

(iv) Vessels appearing in the IUU Vessel List that enter ports voluntarily are not authorised to land or tranship therein and are inspected in accordance with Conservation Measure 10–03 on so entering;

(v) The chartering of vessels included in the IUU Vessel List is prohibited;

(vi) Granting of their flag to vessels appearing in the IUU Vessel List is refused;

(vii) Imports of *Dissostichus* spp. from vessels included in the IUU Vessel List are prohibited;

(viii) 'Export or Re-export Government Authority Validation' is not certified when the shipment (of *Dissostichus* spp.) is declared to have been caught by any vessel included in the IUU Vessel List;

(ix) Importers, transporters and other sectors concerned, are encouraged to refrain from negotiating and from transhipping of fish caught by vessels appearing in the IUU Vessel List;

(x) Any appropriate information which is suitably documented is collected and exchanged with other Contracting Parties or cooperating non-Contracting Parties, entities or fishing entities with the aim of detecting, controlling and preventing the use of false import/export certificates regarding fish from vessels appearing in the IUU Vessel List;

(xi) They do not register or de-register vessels that have been placed on the Provisional IUU List until such time as the Commission has had the opportunity to examine the List and has made its determination;

(xii) They inform, where possible, the proposed new flag State of the vessel that the vessel is on the Provisional IUU List and urge that State not to register the vessel.

19. The Executive Secretary shall place the IUU Vessel List approved by the Commission on the CCAMLR Web site. Furthermore, the Executive Secretary shall communicate the IUU Vessel List to the Food and Agriculture Organization (FAO) and appropriate regional fisheries management organisations to enhance cooperation between CCAMLR and these organisations for the purposes of preventing, deterring and eliminating IUU fishing.

20. If Contracting Parties obtain new or changed information for vessels on the IUU Vessel List in relation to the details in paragraphs 6(i) to (vii), they shall notify the Executive Secretary who shall place a notification on the secure section of the CCAMLR Web site. If there are no comments on the information within seven (7) days, the Secretariat will revise the IUU Vessel List.

21. Without prejudice to the rights of Flag States and Coastal States to take proper action consistent with international law, Contracting Parties should not take any trade measures or other sanctions which are inconsistent with their international obligations against vessels using as the basis for the action the fact that the vessel or vessels have been included in the draft list drawn up by the Secretariat, pursuant to paragraph 7.

22. The Chair of the Commission shall request the Contracting Parties identified pursuant to paragraph 1 to take all necessary measures to avoid diminishing the effectiveness of the CCAMLR conservation measures resulting from their vessels' activities, and to advise the Commission of actions taken in that regard.

23. The Commission shall review, at subsequent annual meetings, as appropriate, action taken by those Contracting Parties to which requests have been made pursuant to paragraph 22, and identify those which have not rectified their fishing activities.

24. The Commission shall decide appropriate measures to be taken in respect to *Dissostichus* spp. so as to address these issues with those identified Contracting Parties. In this respect, Contracting Parties may cooperate to adopt appropriate multilaterally agreed trade-related measures, consistent with the World Trade Organization (WTO), that may be necessary to prevent, deter and eliminate the IUU fishing activities identified by the Commission. Multilateral trade-related measures may be used to support cooperative efforts to ensure that trade in *Dissostichus* spp. and its products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of CCAMLR's conservation measures which are consistent with the United Nations Convention on the Law of the Sea 1982.

25. The Secretariat shall circulate to non-Contracting Parties cooperating with the Commission by participating in the CDS:

(i) The Provisional IUU List, together with the request that, to the extent possible in accordance with their applicable laws and regulations, they do not register, or de-register vessels that have been placed on the list until such time as the Commission has had the opportunity to examine the Provisional IUU Vessel List and has made its determination;

(ii) The IUU Vessel List, together with the request, to the extent possible in accordance with their applicable laws and regulations, that they do not register vessels that have been placed on the List unless they are removed from the List by the Commission.

Conservation Measure 21–02 (2004) [1, 2]

Exploratory Fisheries

Species all
Area all
Season all
Gear all

The Commission,

Recognising that in the past, some Antarctic fisheries had been initiated and subsequently expanded in the Convention Area before sufficient information was available upon which to base management advice,

Agreeing that exploratory fishing should not be allowed to expand faster than the acquisition of information necessary to ensure that the fishery can and will be conducted in accordance with the principles set forth in Article II,

Hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. For the purposes of this conservation measure, exploratory fisheries are defined as follows:

(i) An exploratory fishery shall be defined as a fishery that was previously classified as a 'new fishery', as defined by Conservation Measure 21–01;

(ii) An exploratory fishery shall continue to be classified as such until sufficient information is available:

(a) To evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield;

(b) To review the fishery's potential impacts on dependent and related species;

(c) To allow the Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels, as well as effort levels and fishing gear, where appropriate.

2. To ensure that adequate information is made available to the Scientific Committee for evaluation, during the period when a fishery is classified as exploratory, the Scientific Committee shall develop (and update annually as appropriate) a Data Collection Plan, which should include research proposals, as appropriate. This shall identify the data needed and describe any operational research actions necessary to obtain the relevant data from the exploratory fishery to enable an assessment of the stock to be made.

3. The Data Collection Plan shall include, where appropriate:

(i) A description of the catch, effort, and related biological, ecological, and environmental data required to undertake the evaluations described in paragraph 1(ii), and the date by which such data are to be reported annually to CCAMLR;

(ii) A plan for directing fishing effort during the exploratory phase to permit the acquisition of relevant data to evaluate the fishery potential and the ecological relationships among harvested, dependent, and related populations and the likelihood of adverse impacts;

(iii) Where appropriate, a plan for the acquisition of any other research data by fishing vessels, including activities that may require the cooperative activities of scientific observers and the vessel, as may be required for the Scientific Committee to evaluate the fishery potential and the ecological relationships among harvested,

dependent, and related populations and the likelihood of adverse impacts;

(iv) An evaluation of the time-scales involved in determining the responses of harvested, dependent and related populations to fishing activities.

4. The Commission shall annually determine a precautionary catch limit at a level not substantially above that necessary to obtain the information specified in the Data Collection Plan and required to undertake the evaluations described in paragraph 1(ii);

5. Any Member proposing to participate in an exploratory fishery shall:

(i) Notify its intention to the Commission not less than three months in advance of the next regular meeting of the Commission. This notification shall include the information prescribed in paragraph 4 of Conservation Measure 10–02 in respect of vessels proposing to participate in the fishery, with the exception that the notification shall not be required to specify the time periods authorised for fishing referred to in subparagraph 4(ii) of Conservation Measure 10–02. Members shall, to the extent practicable, also provide in their notification the additional information detailed in paragraph 5 of Conservation Measure 10–02 in respect to each fishing vessel notified. Members are not hereby exempted from their obligations under Conservation Measure 10–02 to submit any necessary updates to vessel and licence details within the deadline established therein as of issuance of the licence to the vessel concerned.

(ii) Prepare and submit to CCAMLR by a specified date a Fishery Operations Plan for the fishing season, for review by the Scientific Committee and the Commission. The Fishery Operations Plan shall include as much of the following information as the Member is able to provide, so as to assist the Scientific Committee in its preparation of the Data Collection Plan:

(a) The nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(b) Biological information on the target species from comprehensive research/survey cruises, such as distribution, abundance, demographic data, and information on stock identity;

(c) Details of dependent and related species and the likelihood of their being affected by the proposed fishery;

(d) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield;

(iii) Provide a commitment, in its proposal, to implement any Data Collection Plan developed by the Scientific Committee for the fishery.

6. On the basis of the information submitted in accordance with paragraph 5, and taking into account the advice and evaluation provided by the Scientific Committee and SCIC, the Commission shall annually consider adoption of relevant conservation measures for each exploratory fishery.

7. The Commission shall not consider a notification by a Member unless the information required by paragraph 5 has been submitted by the due date.

8. Notwithstanding paragraph 7, Members shall be entitled under Conservation Measure 10–02 to authorise participation in an exploratory fishery a vessel other than that identified by the Commission in accordance with paragraph 5 if the notified vessel is prevented from participation due to legitimate operational or force majeure reasons. In such circumstances the Member concerned shall immediately inform the Secretariat thereof providing:

(i) Full details of the intended replacement vessel(s) as prescribed in subparagraph 5(i);

(ii) A comprehensive account of the reasons justifying the replacement and any relevant supporting evidence or references.

The Secretariat shall immediately circulate this information to all Members.

9. Members whose vessels participate in exploratory fisheries in accordance with paragraphs 5 and/or 8 shall:

(i) Ensure that their vessels are equipped and configured so that they can comply with all relevant conservation measures;

(ii) Ensure that each vessel carries a CCAMLR-designated scientific observer to collect data in accordance with the Data Collection Plan, and to assist in collecting biological and other relevant data;

(iii) Annually (by the specified date) submit to CCAMLR the data specified by the Data Collection Plan;

(iv) Be prohibited from continuing participation in the relevant exploratory fishing if the data specified in the Data Collection Plan have not been submitted to CCAMLR for the most recent season in which fishing occurred, until the relevant data have been submitted to CCAMLR and the Scientific Committee has been allowed an opportunity to review the data.

10. A vessel on either of the IUU Vessel Lists established under Conservation Measures 10–06 and 10–07 shall not be permitted to participate in exploratory fisheries.

11. Notifications for exploratory fisheries pursuant to the provisions above shall be subject to an administrative cost recovery scheme and shall therefore be accompanied by a payment per vessel the amount and refundable component of which shall be decided by the Commission, as well as the conditions and modalities according to which such payment shall be made.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands

[2] Except for waters adjacent to the Prince Edward Islands

Conservation Measure 23–01 (2004)

Five-Day Catch and Effort Reporting System

Species all
Area various
Season all
Gear various

This conservation measure is adopted in accordance with Conservation Measure 31–01 where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: Day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels. The catch and effort data shall reach the Executive Secretary not later than two (2) working days after the end of the reporting period. In the case of longline fisheries, the number of hooks shall also be reported.

3. A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery even if no catches are taken. A Contracting Party may authorise each of its vessels to report directly to the Secretariat.

4. The catch of all species, including by-catch species, must be reported.

5. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

6. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the

date upon which the total allowable catch is likely to be reached for that season. In the case of exploratory fisheries, the Executive Secretary shall also notify total aggregate catch for the season to date in each small-scale research unit (SSRU) together with an estimate of the date upon which the total allowable catch is likely to be reached in each SSRU for that season. Estimates shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

7. At the end of every six reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the six most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

8. If the estimated date of completion of the total allowable catch, is within five days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later. In the case of exploratory fisheries, if the estimated date of completion of the catch in any SSRU is within five days of the day on which the Secretariat received the report of catches, the Executive Secretary shall additionally inform all Contracting Parties that fishing in that SSRU will be prohibited from that calculated day, or on the day on which the report was received, whichever is the later.

9. Should a Contracting Party, or where a vessel is authorised to report directly to the Secretariat, the vessel, fail to transmit a report to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two five-day periods, or, in the case of exploratory fisheries, a further one five-day period, those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to the vessel which has failed to supply the data as required and the Contracting Party concerned shall require the vessel to cease fishing. If the Executive Secretary is notified by the Contracting Party that the failure of the vessel to report is due to technical difficulties, the vessel may resume fishing once the report or explanation concerning the failure has been submitted.

Conservation Measure 23–06 (2004)

Data Reporting System for Krill Fisheries

Species krill
Area all
Season all
Gear all

1. This conservation measure is invoked by the conservation measures to which it is attached.

2. Catches shall be reported in accordance with the monthly catch and effort reporting system set out in Conservation Measure 23–03.

3. At the end of each fishing season each Contracting Party shall obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1). It shall aggregate these data by 10×10 n mile rectangle and 10-day period, and transmit those data in the specified format to the Executive Secretary not later than 1 April of the following year.

4. For the purposes of the fine-scale data the calendar month shall be divided into three 10-day reporting periods, viz: day 1 to day 10, day 11 day 20, day 21 to the last day of the month. These 10-day reporting periods are hereinafter referred to as periods A, B and C.

Conservation Measure 24–02 (2004)

Longline Weighting for Seabird Conservation

Species seabirds
Area selected
Season all
Gear longline

In respect of fisheries in Statistical Subareas 48.6, 88.1 and 88.2 and Statistical Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2, paragraph 4 of Conservation Measure 25–02 shall not apply only where a vessel can demonstrate its ability to fully comply with one of the following protocols.

Protocol A (for vessels monitoring longline sink rate with Time-Depth Recorders (TDRs) and using longlines to which weights are manually attached):

A1. Prior to entry into force of the licence for this fishery and once per fishing season prior to entering the Convention Area, the vessel shall, under observation by a scientific observer:

(i) Set a minimum of two longlines of the maximum length to be used by the vessel in the Convention Area with a minimum of four (TDRs) on the middle one-third of each longline;

(ii) Randomise TDR placement on the longline, noting that all tests should be applied midway between weights;

(iii) Calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) The sink rate shall be measured as an average of the time taken for the longline to sink from the surface (0 m) to 15 m;

(b) This sink rate shall be at a minimum rate of 0.3 m/s;

(iv) If the minimum sink rate is not achieved at all eight sample points (four tests on two longlines), continue the testing until such time as a total of eight tests with a minimum sink rate of 0.3 m/s are recorded;

(v) All equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

A2. During fishing, for a vessel to be allowed to maintain the exemption to night-time setting requirements (paragraph 4 of Conservation Measure 25–02), regular longline sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Attempt to conduct a TDR test on one longline set every twenty-four hour period;

(ii) Every seven days place at least four TDRs on a single longline to determine any sink rate variation along the longline;

(iii) Randomise TDR placement on the longline, noting that all tests should be applied halfway between weights;

(iv) Calculate an individual longline sink rate for each TDR when returned to the vessel;

(v) Measure the longline sink rate as an average of the time taken for the longline to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) Ensure that all longlines are weighted to achieve a minimum longline sink rate of 0.3 m/s at all times whilst operating under this exemption;

(ii) Report daily to its national agency on the achievement of this target whilst operating under this exemption;

(iii) Ensure that data collected from longline sink rate tests prior to entering the Convention Area and longline sink rate monitoring during fishing are recorded in the CCAMLR-approved format [1] and submitted to the relevant national agency and CCAMLR Data Manager within two months of the vessel departing a fishery to which this measure applies.

Protocol B (for vessels monitoring longline sink rate with bottle tests and using longlines to which weights are manually attached):

B1. Prior to entry into force of the licence for this fishery and once per

fishing season prior to entering the Convention Area, the vessel shall, under observation by a scientific observer:

(i) Set a minimum of two longlines of the maximum length to be used by the vessel in the Convention Area with a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of each longline;

(ii) Randomise bottle test placement on the longline, noting that all tests should be applied midway between weights;

(iii) Calculate an individual sink rate for each bottle test at the time of the test, where:

(a) The sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 10 m;

(b) This sink rate shall be at a minimum rate of 0.3 m/s;

(iv) If the minimum sink rate is not achieved at all eight sample points (four tests on two longlines), continue the testing until such time as a total of eight tests with a minimum sink rate of 0.3 m/s are recorded;

(v) All equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to be allowed to maintain the exemption to night-time setting requirements (paragraph 4 of Conservation Measure 25–02), regular longline sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Attempt to conduct a bottle test on one longline set every twenty-four hour period;

(ii) Every seven days conduct at least four bottle tests on a single longline to determine any sink rate variation along the longline;

(iii) Randomise bottle test placement on the longline, noting that all tests should be applied halfway between weights;

(iv) Calculate an individual longline sink rate for each bottle test at the time of the test;

(v) Measure the longline sink rate as the time taken for the longline to sink from the surface (0 m) to 10 m.

B3. The vessel shall:

(i) Ensure that all longlines are weighted to achieve a minimum longline sink rate of 0.3 m/s at all times whilst operating under this exemption;

(ii) Report daily to its national agency on the achievement of this target whilst operating under this exemption;

(iii) Ensure that data collected from longline sink rate tests prior to entering the Convention Area and longline sink rate monitoring during fishing are recorded in the CCAMLR-approved format [1] and submitted to the relevant national agency and CCAMLR Data Manager within two months of the vessel departing a fishery to which this measure applies.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 10 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 500–1000 ml plastic bottle [2] with a longline clip attached to the other end. The length measurement is taken from the attachment point (terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed in low light conditions and at night.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline, [3] midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t2 in seconds. [4] The result of the test is calculated as follows:

$$\text{Longline sink rate} = 10 / (t2 - t1)$$

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

Protocol C (for vessels monitoring longline sink rate with either (TDR) or bottle tests, and using internally weighted longlines with integrated weight of at least 50 g/m and designed to sink instantly with a linear profile at greater than 0.2 m/s with no external weights attached):

C1. Prior to entry into force of the licence for this fishery and once per fishing season prior to entering the Convention Area, the vessel shall, under observation by a scientific observer:

(i) Set a minimum of two longlines of the maximum length to be used by the vessel in the Convention Area with either a minimum of four TDRs, or a minimum of four bottle tests (*see* paragraphs B5 to B9) on the middle one-third of each longline;

(ii) Randomise TDR or bottle test placement on the longline;

(iii) Calculate an individual sink rate for each TDR when returned to the vessel, or for each bottle test at the time of the test, where:

(a) The sink rate shall be measured as an average of the time taken for the longline to sink from the surface (0 m) to 15 m for TDRs and the time taken for the longline to sink from the surface (0 m) to 10 m for bottle tests;

(b) This sink rate shall be at a minimum rate of 0.2 m/s;

(iv) If the minimum sink rate is not achieved at all eight sample points (four tests on two longlines), continue the testing until such time as a total of eight tests with a minimum sink rate of 0.2 m/s are recorded;

(v) All equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

C2. During fishing, for a vessel to be allowed to maintain the exemption to night-time setting requirements (paragraph 4 of Conservation Measure 25–02), regular longline sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Attempt to conduct a TDR or bottle test on one longline set every twenty-four hour period;

(ii) Every seven days conduct at least four TDR or bottle tests on a single longline to determine any sink rate variation along the longline;

(iii) Randomise TDR or bottle test placement on the longline;

(iv) Calculate an individual longline sink rate for each TDR when returned to the vessel or each bottle test at the time of the test;

(v) Measure the longline sink rate for bottle tests as the time taken for the longline to sink from the surface (0 m) to 10 m, or for TDRs the average of the time taken for the longline to sink from the surface (0 m) to 15 m.

C3. The vessel shall:

(i) Ensure that all longlines are set so as to achieve a minimum longline sink rate of 0.2 m/s at all times whilst operating under this exemption;

(ii) Report daily to its national agency on the achievement of this target whilst operating under this exemption;

(iii) Ensure that data collected from longline sink rate tests prior to entering the Convention Area and longline sink rate monitoring during fishing are recorded in the CCAMLR-approved format[1] and submitted to the relevant national agency and CCAMLR Data Manager within two months of the vessel departing a fishery to which this measure applies.

[1] Included in the scientific observer electronic logbook.

[2] A plastic water bottle that has a ''stopper'' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.

[3] On autolines attach to the backbone; on the Spanish longline system attach to the hookline.

[4] Binoculars will make this process easier to view, especially in foul weather.

Conservation Measure 32–09 (2004)

Prohibition of Directed Fishing for *Dissostichus* spp. Except in Accordance With Specific Conservation Measures in the 2004/05 Season

Species toothfish
Area 48.5
Season 2004/05
Gear all

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subarea 48.5 is prohibited from 1 December 2004 to 30 November 2005.

Conservation Measure 33–02 (2004)

Limitation of By-Catch in Statistical Division 58.5.2 in the 2004/05 Season

Species by-catch
Area 58.5.2
Season 2004/05
Gear all

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2004/05 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2004/05 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes, the by-catch of *Macrourus* spp. shall not exceed 360 tonnes and the by-catch of skates and rays shall not exceed 120 tonnes. For the purposes of this measure, '*Macrourus* spp.' and ''skates and rays'' should each be counted as a single species.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus, Lepidonotothen squamifrons, Macrourus* spp. or skates and rays is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days. [2] The location where the by-catch exceeded 2 tonnes is defined as the path [3] followed by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 1 tonne, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 1 tonne for a period of at least five days [2]. The location where the by-catch exceeded 1 tonne is defined as the path [3] followed by the fishing vessel.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[3] For a trawl the path is defined from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. For a longline the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

Conservation Measure 33–03 (2004) [1] [2]

Limitation of By-Catch in New and Exploratory Fisheries in the 2004/05 Season

Species by-catch
Area various
Season 2004/05
Gear all

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2004/05 season except where specific by-catch conservation measures apply.

2. The catch limits for all by-catch species are set out in Annex 33–03/A. Within these catch limits, the total catch of by-catch species in any SSRU shall not exceed the following limits:

- Skates and rays 5% of the catch limit of *Dissostichus* spp. or 50 tonnes whichever is greater;
- *Macrourus* spp. 16% of the catch limit for *Dissostichus* spp. or 20 tonnes, whichever is greater;
- All other species combined 20 tonnes.

3. For the purposes of this measure '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

4. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles [3] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days [4]. The location where the by-catch exceeded 1 tonne is defined as the path [5] followed by the fishing vessel.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[4] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[5] For a trawl the path is defined from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. For a longline the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

Annex 33–03/A

Table 1: By-catch catch limits for new and exploratory fisheries in 2004/05.
Subarea/Division
Region Dissostichus spp. catch limit (tonnes per region)
Skates and rays (tonnes per region)
By-catch catch limit *Macrourus* spp. (tonnes per region)
Other species (tonnes per SSRU)
48.6 north of 60°S 455 50 73 20
south of 60°S 455 50 73 20
58.4.1 whole division 600 50 96 20
58.4.2 whole division 780 50 124 20
58.4.3a whole division 250 50 26 20
58.4.3b whole division 300 50 159 20
88.1 whole subarea 3250 163 520 20
88.2 south of 65§ S 375 50 60 20
Region: As defined in column 2 of this table.
Rules for catch limits for by-catch species:
Skates and rays: 5% of the catch limit for *Dissostichus* spp. or 50 tonnes, which ever is greatest (SC–CAMLR–XXI, paragraph 5.76).
Macrourus spp.: 16% of the catch limit for *Dissostichus* spp., except in Divisions 58.4.3a and 58.4.3b (SC–CAMLR—XXII, paragraph 4.207).
Other species: 20 tonnes per SSRU.

Conservation Measure 41–01 (2004) [1] [2]

General Measures for Exploratory Fisheries for *Dissostichus* spp. in the Convention Area in the 2004/05 Season

Species
Toothfish
Area various
Season 2004/05

Gear longline, trawl

The Commission hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any small-scale research unit (SSRU) shall cease when the reported catch reaches the specified catch limit [3] and that SSRU shall be closed to fishing for the remainder of the season.

3. In order to give effect to paragraph 2 above:

(i) The precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul for the purposes of catch and effort reporting;

(ii) The precise geographic position of a haul/set in longline fisheries will be determined by the centre-point of the line or lines deployed for the purposes of catch and effort reporting;

(iii) The vessel will be deemed to be fishing in any SSRU from the beginning of the setting process until the completion of the hauling of all lines;

(iv) Catch and effort information for each species by SSRU shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(v) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any SSRU is likely to reach the specified catch limit, and of the closure of that SSRU when that limit is reached. Upon such notification from the Secretariat, all fishing gear shall be hauled immediately. No part of a trawl path may lie within a closed SSRU and no part of a longline may be set within a closed SSRU.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 33–03.

5. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2004/05 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 41–01/A), Research Plan (Annex 41–01/B) and Tagging Program (Annex 41–01/C) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to 31 August 2005 shall be reported to CCAMLR by 30 September 2005 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2005. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] Unless otherwise specified, the catch limit for Dissostichus spp. shall be 100 tonnes in any SSRU except in respect of Subarea 88.2.

Annex 41–01/A

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 23–01) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 23–04 and 23–05).

2. All data required by the CCAMLR Scientific Observers Manual for finfish fisheries will be collected. These include:

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by-haul catch and catch per effort by species;

(iii) Haul-by-haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) Number and mass by species of by-catch of fish and other organisms;

(viii) Observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) Position and sea depth at each end of every line in a haul;

(ii) Setting, soak, and hauling times;

(iii) Number and species of fish lost at surface;

(iv) Number of hooks set;

(v) Bait type;

(vi) Baiting success (%);

(vii) Hook type;

(viii) Sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 41–01/B

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 and Figure 1.

3. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into a SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, shall be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tonnes of catch for longlining, whichever trigger level is achieved first, or 10 tonnes of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in a SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

(v) In SSRUs A, B, C, E, and G in Statistical Subarea 88.1 where fishable seabed area is less than 15,000 km^2, paragraphs 3(ii), 3(iii) and 3(iv) do not apply and on completion of 10 research hauls the vessel may continue to fish within the SSRU.

4. To be designated as a research haul:

(i) Each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) Each haul shall comprise: for longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E, paragraph 4);

(iii) Each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. All data specified in the Data Collection Plan (Annex 41–01/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies (paragraphs 2(iv) to 2(vi) of Annex 41–01/A). Where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

Figure 1: Small-scale research units for new and exploratory fisheries. The boundaries of these units are listed in Table 1. EEZ boundaries for Australia, France and South Africa are marked in order to address notifications for new and exploratory fisheries in waters adjacent to these zones. Dashed line—delineation between *Dissostichus eleginoides* and *Dissostichus mawsoni*.

Table 1: Description Of Small-Scale Research Units (SSRUs) (*see* also Figure 1)

Region SSRU Boundary Line

48.6 A From 50°S 20°W, due east to 30°E, due south to 60°S, due west to 20°W, due north to 50°S.

B From 60°S 20°W, due east to 10°W, due south to coast, westward along coast to 20°W, due north to 60°S.

C From 60°S 10°W, due east to 0° longitude, due south to coast, westward along coast to 10°W, due north to 60°S.

D From 60°S 0° longitude, due east to 10°E, due south to coast, westward along coast to 0° longitude, due north to 60°S.

E From 60°S 10°E, due east to 20°E, due south to coast, westward along coast to 10°E, due north to 60°S.

F From 60°S 20°E, due east to 30°E, due south to coast, westward along coast to 20°E, due north to 60°S.

58.4.1 A From 55°S 86°E, due east to 150°E, due south to 60°S, due west to 86°E, due north to 55°S.

B From 60°S 86°E, due east to 90°E, due south to coast, westward along coast to 80°E, due north to 64°S, due east to 86°E, due north to 60°S.

C From 60°S 90°E, due east to 100°E, due south to coast, westward along coast to 90°E, due north to 60°S.

D From 60°S 100°E, due east to 110°E, due south to coast, westward along coast to 100°E, due north to 60°S.

E From 60°S 110°E, due east to 120°E, due south to coast, westward along coast to 110°E, due north to 60°S.

F From 60°S 120°E, due east to 130°E, due south to coast, westward along coast to 120°E, due north to 60°S.

G From 60°S 130°E, due east to 140°E, due south to coast, westward along coast to 130°E, due north to 60°S.

H From 60°S 140°E, due east to 150°E, due south to coast, westward along coast to 140°E, due north to 60°S.

58.4.2 A From 62°S 30°E, due east to 40°E, due south to coast, westward along coast to 30°E, due north to 62°S.

B From 62°S 40°E, due east to 50°E, due south to coast, westward along coast to 40°E, due north to 62°S.

C From 62°S 50°E, due east to 60°E, due south to coast, westward along coast to 50°E, due north to 62°S.

D From 62°S 60°E, due east to 70°E, due south to coast, westward along coast to 60°E, due north to 62°S.

E From 62°S 70°E, due east to 73°10′E, due south to 64°S, due east to 80°E, due south to coast, westward along coast to 70°E, due north to 62°S.

58.4.3a A Whole division, from 56°S 60°E, due east to 73°10′E, due south to 62°S, due west to 60°E, due north to 56°S.

58.4.3b A Whole division, from 56°S 73°10′E, due east to 80°E, due north to 55°S, due east to 86°S, south to 64°S, due west to 73°10′E, due north to 56°S.

58.4.4 A From 51°S 40°E, due east to 42°E, due south to 54°S, due west to 40°E, due north to 51°S.

B From 51°S 42°E, due east to 46°E, due south to 54°S, due west to 42°E, due north to 51°S.

C From 51°S 46°E, due east to 50°E, due south to 54°S, due west to 46°E, due north to 51°S.

D Whole division excluding SSRUs A, B, C, and with outer boundary from 50°S 30°E, due east to 60°E, due south to 62°S, due west to 30°E, due north to 50°S.

58.6 A From 45°S 40°E, due east to 44°E, due south to 48°S, due west to 40°E, due north to 45°S.

B From 45°S 44°E, due east to 48°E, due south to 48°S, due west to 44°E, due north to 45°S.

C From 45°S 48°E, due east to 51°E, due south to 48°S, due west to 48°E, due north to 45°S.

D From 45°S 51°E, due east to 54°E, due south to 48°S, due west to 51°E, due north to 45°S.

58.7 A From 45°S 37°E, due east to 40°E, due south to 48°S, due west to 37°E, due north to 45°S.

88.1 A From 60°S 150°E, due east to 170°E, due south to 65°S, due west to 150°E, due north to 60°S.

B From 60°S 170°E, due east to 179°E, due south to 66°40′S, due west to 170°E, due north to 60°S.

C From 60°S 179°E, due east to 170°W, due south to 70°S, due west to 178°W, due north to 66°40′S, due west to 179°E, due north to 60°S.

D From 65°S 150°E, due east to 160°E, due south to coast, westward along coast to 150°E, due north to 65°S.

E From 65°S 160°E, due east to 170°E, due south to 68°30′S, due west to 160°E, due north to 65°S.

F From 68°30′S 160°E, due east to 170°E, due south to coast, westward along coast to 160°E, due north to 68°30′S.

G From 66°40′S 170°E, due east to 178°W, due south to 70°S, due west to 178°50′E, due south to 70°50′S, due west to 170°E, due north to 66°40′S.

H From 70°50′S 170°E, due east to 178°50′E, due south to 73°S, due west to coast, northward along coast to 170°E, due north to 70°50′S.

I From 70°S 178°50′E, due east to 170°W, due south to 73°S, due west to 178°50′E, due north to 70°S.

J From 73°S at coast near 169°30′E, due east to 178°50′E, due south to 80°S, due west to coast, northward along coast to 73°S.

K From 73°S 178°50′E, due east to 170°W, due south to 76°S, due west to 178°50′E, due north to 73°S.

L From 76°S 178°50′E, due east to 170°W, due south to 80°S, due west to 178°50′E, due north to 76°S.

88.2 A From 60°S 170°W, due east to 160°W, due south to coast, westward along coast to 170°W, due north to 60°S.

B From 60°S 160°W, due east to 150°W, due south to coast, westward along coast to 160°W, due north to 60°S.

C From 60°S 150°W, due east to 140°W, due south to coast, westward along coast to 150°W, due north to 60°S.

D From 60°S 140°W, due east to 130°W, due south to coast, westward along coast to 140°W, due north to 60°S.

E From 60°S 130°W, due east to 120°W, due south to coast, westward along coast to 130°W, due north to 60°S.

F From 60°S 120°W, due east to 110°W, due south to coast, westward along coast to 120°W, due north to 60°S.

G From 60°S 110°W, due east to 105°W, due south to coast, westward along coast to 110°W, due north to 60°S.

88.3 A From 60°S 105°W, due east to 95°W, due south to coast, westward along coast to 105°W, due north to 60°S.

B From 60°S 95°W, due east to 85°W, due south to coast, westward along coast to 95°W, due north to 60°S.

C From 60°S 85°W, due east to 75°W, due south to coast, westward along coast to 85°W, due north to 60°S.

D From 60°S 75°W, due east to 70°W, due south to coast, westward along coast to 75°W, due north to 60°S.

Annex 41–01/C

Tagging Program for Dissostichus SPP. in Exploratory Fisheries

1. The CCAMLR scientific observer, in cooperation with the fishing vessel, shall be required to undertake the tagging program.

2. This program shall apply in each exploratory longline fishery, and any vessel that participates in more then one exploratory fishery shall apply the following in each exploratory fishery in which that vessels fishes:

(i) Each longline vessel shall tag and release *Dissostichus* spp. at a rate of one toothfish per tonne of green weight catch throughout the season according to the CCAMLR Tagging Protocol [1]. Vessels shall only discontinue tagging after they have tagged 500 toothfish, or leave the fishery having tagged one toothfish per tonne of green weight caught.

(ii) The program shall target toothfish of all sizes in order to meet the tagging requirement of one toothfish per tonne of green weight catch. All released toothfish must be double-tagged and releases should cover as broad a geographical area as possible.

(iii) All tags shall be clearly imprinted with a unique serial number and a return address so that the origin of tags can be traced in the case of recapture of the tagged toothfish [1].

(iv) Recaptured tagged fish (*i.e.* fish caught that have a previously inserted tag) shall not be re-released, even if at liberty for only a short period.

(v) All recaptured tagged fish should be biologically sampled (length, weight, sex, gonad stage), an electronic photograph taken if possible, the otoliths recovered and the tag removed.

3. All relevant tag data and any data recording tag recaptures shall be reported electronically in the CCAMLR format [1] to the CCAMLR Data Manager within three months of the vessel departing the exploratory fisheries.

4. All relevant tag data, any data recording tag recaptures, and specimens (tags and otoliths) from recaptures shall also be reported electronically in the CCAMLR format [1] to the relevant regional tag data repository as detailed in the CCAMLR Tagging Protocol (available at *http://www.ccamlr.org*).

[1] In accordance with the CCAMLR Tagging Protocol for exploratory fisheries which is available from the Secretariat and at *http://www.ccamlr.org*.

Conservation Measure 41–02 (2004)

Limits on the Fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2004/05 Season

Species toothfish
Area 48.3
Season 2004/05
Gear longline, pot

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

1. The fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.

2. For the purpose of this fishery, the area open to the fishery is defined as that portion of Subarea 48.3 that lies within the area bounded by latitudes 52°30′ S and 56°0′ S and by longitudes 33°30′W and 48°0′ W.

Access

3. A map illustrating the area defined by paragraph 2 is appended to this conservation measure (Annex 41–02/A). The portion of Subarea 48.3 outside that defined above shall be closed to directed fishing for *Dissostichus eleginoides* in the 2004/05 season.

Catch limit 4. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2004/05 season shall be limited to 3 050 tonnes. The catch limit shall be further subdivided between the Management Areas shown in Annex 41–02/A as follows:

Management Area A: 0 tonnes.
Management Area B: 915 tonnes.
Management Area C: 2 135 tonnes.

Season 5. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2004/05 season is defined as the period from 1 May to 31 August 2005, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September 2005 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2003/04 season. This extension to the season shall also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel.

By-catch 6. The by-catch of crab in any pot fishery undertaken shall be counted against the catch limit in the crab fishery in Statistical Subarea 48.3.

7. The by-catch of finfish in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2004/05 season shall not exceed 152 tonnes for skates and rays and 152 tonnes for *Macrourus* spp. For the purpose of these by-catch limits, skates and rays shall be counted as a single species.

8. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles [1] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days [2]. The location where the by-catch exceeded 1 tonne is defined as the path [3] followed by the fishing vessel.

Mitigation 9. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers 10. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
Catch/effort

11. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

12. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.

13. The total number and weight of *Dissostichus eleginoides* discarded, including those with the ''jellymeat'' condition, shall be reported. These fish will count towards the total allowable catch.

Data:
Biological

14. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research
Fishing

15. Research fishing under the provisions of Conservation Measure 24–01 shall be limited to 10 tonnes of catch

and to one vessel in Management Area A shown in the map in Annex 41–02/A during the 2004/05 season. Catches of *Dissostichus eleginoides* taken under the provisions of Conservation Measure 24–01 in the area of the fishery defined in this conservation measure shall be considered as part of the catch limit.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[3] For a longline the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

Annex 41–02/A

Subarea 48.3—the area of the fishery and the three management areas for catch allocation in the 2004/05 season according to paragraph 4. Latitudes and longitudes are given in degrees and minutes. 1 000 and 2 000 m contours are shown.

40 W 43 30′ W
Subarea 48.3
52 30′ S
33 30′ W
56 S
Management Area B
Management Area A
Management Area C
48 00′ W

Conservation Measure 41–04 (2004)

Limits on the Exploratory Fishery for *Dissostichus* spp. in Statistical Subarea 48.6 in the 2004/05 Season

Species toothfish
Area 48.6
Season 2004/05
Gear longline

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Japan, Republic of Korea and New Zealand. The fishery shall be conducted by Japanese, Korean and New Zealand flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2004/05 season shall not exceed a precautionary catch limit of 455 tonnes north of 60°S and 455 tonnes south of 60°S.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005.

By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met.

6. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

7. There shall be no offal discharge in this fishery.

Observers 8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:

Catch/effort

9. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:

Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Conservation Measure 41–05 (2004)

Limits on the Exploratory Fishery for *Dissostichus* spp. in Statistical Division 58.4.2 in the 2004/05 Season

Species toothfish
Area 58.4.2
Season 2004/05
Gear longline

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2005:

Access 1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory longline fishery by Chile, Republic of Korea, New Zealand, Spain and Ukraine. The fishery shall be conducted by one (1) Chilean, two (2) Korean, two (2) New Zealand, two (2) Spanish and one (1) Ukrainian flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2 in the 2004/05 season shall not exceed a precautionary catch limit of 780 tonnes, of which no more 260 tonnes shall be taken in any one of the five small-scale research units (SSRUs) as detailed in Annex B of Conservation Measure 41–01.

3. Catch limits for each of the SSRUs for Statistical Division 58.4.2, shall be as follows: A—260 tonnes; B—0 tonnes; C—260 tonnes; D—0 tonnes; E—260 tonnes.

Season 4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005.

Fishing Operations

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

6. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities.

By-catch 7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 8. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply, providing that vessels comply with Conservation Measure 24–02.

9. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

10. There shall be no offal discharge in this fishery.

Observers 11. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:
Catch/effort

13. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
Biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Conservation Measure 41–06 (2004)

Limits on the Exploratory Fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) Outside Areas of National Jurisdiction in the 2004/05 Season

Species toothfish
Area 58.4.3a
Season 2004/05
Gear longline

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory fishery by Australia, Republic of Korea and Spain. The fishery shall be conducted by Australian, Korean and Spanish flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch limit 2. The total catch of *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2004/05 season shall not exceed a precautionary catch limit of 250 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2004/05 season is defined as the period from 1 May to 31 August 2005, or until the catch limit is reached, whichever is sooner.

By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.

6. The fishery on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with longline weighting as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.

7. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2004/05 fishing season.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
Catch/effort

9. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Conservation Measure 41–07 (2004)

Limits on the Exploratory Fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) Outside Areas of National Jurisdiction in the 2004/05 Season

Species toothfish
Area 58.4.3b
Season 2004/05
Gear longline

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory fishery by Australia, Chile, Japan, Republic of Korea and Spain. The fishery shall be conducted by Australian, Chilean, Japanese, Korean and Spanish flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch limit 2. The total catch of *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2004/05 season shall not exceed a precautionary catch limit of 300 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2004/05 season is defined as the period from 1 May to 31 August 2005, or until the catch limit is reached, whichever is sooner.

By-catch 4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.

6. The fishery on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24-02 and such data shall be reported to the Secretariat immediately.

7. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2004/05 fishing season.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
Catch/effort

9. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Conservation Measure 41–08 (2004)

Limits on the Fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2004/05 Season

Species toothfish
Area 58.5.2
Season 2004/05
Gear longline, trawl

Access 1. The fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be conducted by vessels using trawls or longlines only.

Catch limit 2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2004/05 season shall be limited to 2 787 tonnes west of 79°20′ E.

Season 3. For the purpose of the trawl fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005, or until the catch limit is reached, whichever is sooner. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2004/05 season is defined as the period from 1 May to 31 August 2005, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September 2005 for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the 2003/04 season. This extension to the season will also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel.

By-catch 4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 5. The operation of the trawl fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds and mammals through the course of fishing. The operation of the longline fishery shall be carried out in accordance with Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply for vessels using integrated weighted lines (IWLs). Such vessels may deploy IWL gear during daylight hours if, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02.

Observers 6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:
Catch/effort

7. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Annex 41–08/A;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 41–08/A. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 41–08/A, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.

9. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data:
Biological

10. Fine-scale biological data, as required under Annex 41–08/A, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Annex 41–08/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below;

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 41–09 (2004)

Limits on the Exploratory Fishery for *Dissostichus* spp. in Statistical Subarea 88.1 in the 2004/05 Season

Species toothfish
Area 88.1
Season 2004/05
Gear longline

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Argentina, Australia, New Zealand, Norway, Russia, South Africa, Spain, Ukraine, UK and Uruguay. The fishery shall be conducted by a maximum in the season of two (2) Argentine, one (1) Australian, five (5) New Zealand, one (1) Norwegian, two (2) Russian, two (2) South African, two (2) Spanish, one (1) Ukrainian, one (1) UK and four (4) Uruguayan flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2004/05 season shall not exceed a precautionary catch limit of 3 250 tonnes. Catch limits for each of the SSRUs, as defined in Conservation Measure 41–01, Annex B for Statistical Subarea 88.1, shall be as follows: A—0 tonnes; B—80 tonnes; C—223 tonnes; D—0 tonnes; E—57 tonnes; F—0 tonnes; G—83 tonnes; H—786 tonnes; I—776 tonnes; J—316 tonnes; K—749 tonnes; L—180 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1, the 2004/05 season is defined as the period from 1 December 2004 to 31 August 2005.

Fishing
Operations

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met.

7. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

8. There shall be no offal discharge in this fishery.

Observers 9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:
Catch/effort

13. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
Biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Discharge 16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells);

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots; or

(vi) Incineration ash.

Additional Elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.1 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.1.

18. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

Conservation Measure 41–10 (2004)

Limits on the Exploratory Fishery for *Dissostichus* spp. in Statistical Subarea 88.2 in the 2004/05 Season

Species toothfish
Area 88.2
Season 2004/05
Gear longline

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access 1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Argentina, New Zealand, Norway and Russia. The fishery shall be conducted by a maximum in the season of two (2) Argentine, five (5) New Zealand, one (1) Norwegian and two (2) Russian flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2004/05 season shall not exceed a precautionary catch limit of 375 tonnes.

Season 3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2004/05 season is defined as the period from 1 December 2004 to 31 August 2005.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

By-catch 5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met.

7. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

8. There shall be no offal discharge in this fishery.

Observers 9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS 10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS 11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:
Catch/effort

13. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

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14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
Biological

15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Discharge

16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells);

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots; or

(vi) Incineration ash.

Additional Elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.2 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.2.

Conservation Measure 41–11 (2004)

Limits on the Exploratory Fishery for *Dissostichus* spp. in Statistical Division 58.4.1 in the 2004/05 Season

Species toothfish
Area 58.4.1
Season 2004/05
Gear longline

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee in 2005:

Access 1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.1 shall be limited to the exploratory longline fishery by Chile, Republic of Korea, New Zealand, Spain and Ukraine. The fishery shall be conducted by two (2) Chilean, two (2) Korean, two (2) New Zealand, two (2) Spanish and one (1) Ukrainian flagged vessels using longlines only.

Catch limit 2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.1 in the 2004/05 season shall not exceed a precautionary catch limit of 600 tonnes, of which no more than 200 tonnes shall be taken in any one of the eight small-scale research units (SSRUs) as detailed in Annex B of Conservation Measure 41–01.

3. Catch limits for each of the SSRUs for Statistical Division 58.4.1, shall be as follows: A—0 tonnes; B—0 tonnes; C—200 tonnes; D—0 tonnes; E—200 tonnes; F—0 tonnes; G—200 tonnes; H—0 tonnes.

Season 4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005.

Fishing Operations

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.

6. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities.

By-catch 7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation 8. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply, providing that vessels

comply with Conservation Measure 24–02.

9. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.

10. There shall be no offal discharge in this fishery.

Observers 11. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Research 12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.

Data:
Catch/effort

13. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data:
Biological

15. Fine-scale biological data, as required under Conservation

Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Conservation Measure 42–01 (2004)

Limits on the Fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2004/05 Season

Species icefish
Area 48.3
Season 2004/05
Gear trawl

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period 1 March to 31 May (spawning period).

Catch limit 3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2004/05 season shall be limited to 3 574 tonnes. The total catch of *Champsocephalus gunnari* taken in the period 1 March to 31 May shall be limited to 894 tonnes.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant [1]. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days [2]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season 5. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3, the 2004/05 season is defined as the period from 15 November 2004 to 14 November 2005, or until the catch limit is reached, whichever is sooner.

By-catch 6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–01. If, in the course of the directed fishery for *Champsocephalus gunnari,* the by-catch in any one haul of any of the species named in Conservation Measure 33–01

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes, then the fishing vessel shall move to another location at least 5 n miles distant [1]. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 33–01 exceeded 5% for a period of at least five days [2]. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation 7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds in the course of the fishery.

8. Should any vessel catch a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2004/05 season.

Observers 9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
Catch/effort

10. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari.*

Data:
Biological

12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 13. Each vessel operating in this fishery during the period 1 March to 31 May 2005 shall conduct twenty (20) research trawls in the manner described in Annex 42–01/A.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

Annex 42–01/A

Research Trawls During Spawning Season

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between 1 March and 31 May shall be required to conduct a minimum of 20 research

hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area. These shall be distributed between the four sectors illustrated in Figure 1: Four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep, as illustrated in Figure 1.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari.*

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

Figure 1: Distribution of 20 research hauls on *Champsocephalus gunnari* at Shag Rocks (12) and South Georgia (8) from 1 March to 31 May. Haul locations around South Georgia (stars) are illustrative.

Conservation Measure 42–02 (2004)

Limits on the Fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2004/05 Season

Species icefish
Area 58.5.2
Season 2004/05
Gear trawl

Access 1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari,* the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) Starting at the point where the meridian of longitude 72°15′ E intersects the Australia-France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53°25′ S;

(ii) Then east along that parallel to its intersection with the meridian of longitude 74° E;

(iii) Then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′ S and the meridian of longitude 76° E;

(iv) Then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) Then northwesterly along the geodesic to the intersection of the parallel of latitude 51° S with the meridian of longitude 74°30′ E;

(vi) Then southwesterly along the geodesic to the point of commencement.

3. A chart illustrating the above definition is appended to this conservation measure (Annex 42–02/A). Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari.*

Catch limit 4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2004/05 season shall be limited to 1 864 tonnes.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than the specified minimum legal total length, the fishing vessel shall move to another fishing location at least 5 n miles distant [1]. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days [2]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. From the 1 December 2004 to 30 November 2005 the minimum legal total length shall be 240 mm.

Season 6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005, or until the catch limit is reached, whichever is sooner.

By-catch 7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation 8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers 9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data:
Catch/effort

10. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Annex 42–02/B;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 42–02/B. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Annex 42–02/B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari.*

Data:
Biological

12. Fine-scale biological data, as required under Annex 42–02/B, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

Annex 42–02/A

Chart of the Heard Island Plateau

Annex 42–02/B

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic

transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below;

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 52–01 (2004)

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2004/05 Season

Species crab
Area 48.3
Season 2004/05
Gear pot

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access 1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorised to participate in the crab fishery.

Catch limit 4. The total catch of crab in Statistical Subarea 48.3 in the 2004/05 season shall not exceed a precautionary catch limit of 1 600 tonnes.

5. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa,* males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

Season 6. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005, or until the catch limit is reached, whichever is sooner.

By-catch 7. The by-catch of *Dissostichus eleginoides* shall be counted against the catch limit in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3.

Observers 8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period. Scientific observers shall be afforded unrestricted access to the catch for statistical random sampling prior to, as well as after, sorting by the crew.

Data:
Catch/effort

9. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 23–02 and 23–04 the target species is crab and by-catch species are defined as any species other than crab.

Data:
Biological

11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data requirements described in Annex 52–01/A and the experimental harvest regime described in Conservation Measure 52–02. Data collected for the period up to 31 August 2005 shall be reported to CCAMLR by 30 September 2005 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2005. Such data collected after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 52–01/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data:

Cruise Descriptions: Cruise code, vessel code, permit number, year.

Pot Descriptions: Diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions: Date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions: Retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

Table 1: Data requirements for by-catch species in the crab fishery in Statistical Subarea 48.3.

Species Data Requirements

Dissostichus eleginoides Numbers and estimated total weight

Notothenia rossii Numbers and estimated total weight

Other species Estimated total weight

Biological Data: For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions: Cruise code, vessel code, permit number.

Sample Descriptions: Date, position at start of the set, compass bearing of the set, line number.

Data: Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 52–02 (2004)

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2004/05 Season

Species crab
Area 48.3
Season 2004/05
Gear pot

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2004/05 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2004/05 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) Every vessel when undertaking an experimental harvesting regime shall expend its first 200 000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 52–02/A, the blocks are illustrated (Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) Vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) Vessels shall not expend more than 30 000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) If a vessel returns to port before it has expended 200 000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime;

(v) After completing 200 000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to 30 June 2005 shall be submitted to CCAMLR by 31 August 2005.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 52–01.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 52–01.

6. Fishing vessels shall participate in the experimental harvest regime independently (*i.e.* vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

Annex 52–02/A

Locations of Fishing Areas for the Experimental Harvest Regime of the Exploratory Crab Fishery

AA BB CC DD EE FF GG
M
Y
N Q
U
O
R V
P
S
W
T
X Z
HH
II

Figure 1: Operations area for Phase 1 of the experimental harvest regime for the crab fishery in Statistical Subarea 48.3.

Conservation Measure 61–01 (2004)

Limits on the Exploratory Fishery for *Martialia hyadesi* in Statistical Subarea 48.3 in the 2004/05 Season

Species squid
Area 48.3
Season 2004/05
Gear jig

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 21–02 and 31–01:

Access 1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.

Catch limit 2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2004/05 season shall not exceed a precautionary catch limit of 2 500 tonnes.

Season 3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2004/05 season is defined as the period from 1 December 2004 to 30 November 2005, or until the catch limit is reached, whichever is sooner.

Observers 4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data:
Catch/effort

5. For the purpose of implementing this conservation measure in the 2004/05 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02;

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 23–02 and 23–04, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi.*

Data:

Biological

7. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Research 8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 61–01/A. Data collected pursuant to the plan for the period up to 31 August 2005 shall be reported to CCAMLR by 30 September 2005 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2005.

Annex 61–01/A

Data Collection Plan for Exploratory Squid (Martialia Hyadesi) Fisheries in Statistical Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 23–02; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR *Scientific Observers Manual* for squid fisheries will be collected. These include:

(i) Vessel and observer program details (Form S1);

(ii) Catch information (Form S2);

(iii) Biological data (Form S3).

Conservation Measure 91–01 (2004)

Procedure for According Protection to CEMP Sites

Species all
Area general

The Commission, Bearing in mind that the Scientific Committee has established a system of sites contributing data to the CCAMLR Ecosystem Monitoring Program (CEMP), and that additions may be made to this system in the future,

Recalling that it is not the purpose of the protection accorded to CEMP sites to restrict fishing activity in adjacent waters, Recognising that studies being undertaken at CEMP sites may be vulnerable to accidental or wilful interference,

Concerned, therefore, to provide protection for CEMP sites, scientific investigations and the Antarctic marine living resources therein, in cases where a Member or Members of the Commission conducting or planning to conduct CEMP studies believes such protection to be desirable,

Hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. In cases where a Member or Members of the Commission conducting, or planning to conduct, CEMP studies at a CEMP site believe it desirable that protection should be accorded to the site, it, or they, shall prepare a draft management plan in accordance with Annex A to this conservation measure.

2. Each such draft management plan shall be sent to the Executive Secretary for transmission to all Members of the Commission for their consideration at least three months before its consideration by WG–EMM.

3. The draft management plan shall be considered in turn by WG–EMM, the Scientific Committee and the Commission. In consultation with the Member or Members of the Commission which drew up the draft management plan, it may be amended by any of these bodies. If a draft management plan is amended by either WG–EMM or the Scientific Committee, it shall be passed on in its amended form either to the Scientific Committee or to the Commission as the case may be.

4. If, following completion of the procedures outlined in paragraphs 1 to 3 above, the Commission considers it appropriate to accord the desired protection to the CEMP site, the Commission shall adopt a Resolution calling on Members to comply, on a voluntary basis, with the provisions of the draft management plan, pending the conclusion of action in accordance with paragraphs 5 to 8 below.

5. The Executive Secretary shall communicate such a Resolution to SCAR, the Antarctic Treaty Consultative Parties and, if appropriate, the Contracting Parties to other components of the Antarctic Treaty System which are in force.

6. Unless, before the opening date of the next regular meeting of the Commission, the Executive Secretary has received:

(i) An indication from an Antarctic Treaty Consultative Party that it desires the resolution to be considered at a Consultative Meeting; or

(ii) An objection from any other quarter referred to in paragraph 5 above; the Commission may, by means of a conservation measure, confirm its adoption of the management plan for the CEMP site and shall include the management plan in Annex 91–01/A of that conservation measure.

7. In the event that an Antarctic Treaty Consultative Party has indicated its desire for the Resolution to be considered at a Consultative Meeting, the Commission shall await the outcome of such consideration, and may then proceed accordingly.

8. If objection is received in accordance with paragraphs 6(ii) or 7 above, the Commission may institute such consultations as it may deem appropriate to achieve the necessary protection and to avoid interference with the achievement of the principles and purposes of, and measures approved under, the Antarctic Treaty and other components of the Antarctic Treaty System which are in force.

9. The management plan of any site may be amended by decision of the Commission. In such cases full account shall be taken of the advice of the Scientific Committee. Any amendment which increases the area of the site or adds to categories or types of activities that would jeopardise the objectives of the site shall be subject to the procedures set out in paragraphs 5 to 8 above.

10. Entry into a CEMP site described by a conservation measure shall be prohibited except for the purposes authorised in the relevant management plan for the site and in accordance with a permit issued under paragraph 11.

11. Each Contracting Party shall, as appropriate, issue permits authorising its nationals to carry out activities consistent with the provisions of the management plans for CEMP sites and shall take such other measures, within its competence, as may be necessary to ensure that its nationals comply with the management plans for such sites.

12. Copies of such permits shall be sent to the Executive Secretary as soon as practical after they are issued. Each year the Executive Secretary shall provide the Commission and the Scientific Committee with a brief description of the permits that have been issued by the Parties. In cases where permits are issued for purposes not directly related to the conduct of CEMP studies at the site in question, the Executive Secretary shall forward a copy of the permit to the Member or Members of the Commission conducting CEMP studies at that site.

13. Each management plan shall be reviewed every five years by WG-EMM and the Scientific Committee to determine whether it requires revision and whether continued protection is necessary. The Commission may then act accordingly.

Annex 91–01/A

Information To Be Included in Management Plans for CEMP Sites

A. Geographical Information

1. A description of the site, and any buffer zone within the site, including:
1.1 Geographical coordinates;
1.2 Natural features, including those that define the site;
1.3 Boundary markers;
1.4 Access points (pedestrian, vehicular, airborne, sea-borne);
1.5 Pedestrian and vehicular routes;
1.6 Preferred anchorages;
1.7 Location of structures within the site;
1.8 Restricted areas within the site;
1.9 Location of nearby scientific stations or other facilities;
1.10 Location of areas or sites, in or near the site, which have been accorded protected status in accordance with measures adopted under the Antarctic Treaty or other components of the Antarctic Treaty System that are in force
2. Maps, including the following elements where appropriate:
2.1 Essential features
2.1.1 Title
2.1.2 Latitude and longitude
2.1.3 Scale bar with numerical scale
2.1.4 Comprehensive legend
2.1.5 Adequate and approved place names
2.1.6 Map projection and spheroid modification (indicate beneath the scale bar)
2.1.7 North arrow
2.1.8 Contour interval
2.1.9 Date of map preparation
2.1.10 Map preparer
2.1.11 Date of image collection (where applicable)
2.2 Essential topographical features
2.2.1 Coastline, rock, and ice
2.2.2 Peaks and ridgelines
2.2.3 Ice margins and other glacial features, clear delineation between ice/snow and ice-free ground; if glacial features are part of the boundary, date of survey should be indicated
2.2.4 Contours (labelled as appropriate), survey points, and spot heights
2.2.5 Bathymetric contours of marine areas, with relevant bottom features if known
2.3 Natural features
2.3.1 Lakes, ponds, and streams
2.3.2 Moraines, screes, cliffs, beaches
2.3.3 Beach areas
2.3.4 Bird and seal concentrations or breeding colonies
2.3.5 Extensive areas of vegetation
2.3.6 Wildlife access areas to the sea
2.4 Anthropogenic features
2.4.1 Stations
2.4.2 Field huts, refuges
2.4.3 Campsites
2.4.4 Roads and vehicle tracks, footpaths, feature overlaps
2.4.5 Approach paths and landing areas for airplanes and helicopters
2.4.6 Approach paths and access points for boats (wharfs, jetties)
2.4.7 Power supplies, cables
2.4.8 Antennae
2.4.9 Fuel storage areas
2.4.10 Water reservoirs and pipes
2.4.11 Emergency caches
2.4.12 Markers, signs
2.4.13 Historic sites or artefacts, archaeological sites
2.4.14 Scientific installations or sampling areas
2.4.15 Site contamination or modification
2.5 Boundaries
2.5.1 Boundary of area
2.5.2 Boundaries of subsidiary zones and protected areas within the mapping area
2.5.3 Boundary signs and markers (including cairns)
2.5.4 Boat/aircraft approach routes
2.5.5 Navigation markers or beacons
2.5.6 Survey points and markers
2.6 Other mapping guidelines
2.6.1 Verify all features and boundaries by GPS if possible
2.6.2 Ensure visual balance among elements
2.6.3 Appropriate shading (shading should be distinguishable on a photocopy of the map)
2.6.4 Correct and appropriate text; no feature overlap
2.6.5 Appropriate legend; use SCAR approved map symbols when possible
2.6.6 Text appropriately shadowed on image data
2.6.7 Photographs may be used where appropriate
2.6.8 Official maps should be in black and white
2.6.9 Most likely two or more maps will be needed for a management plan, one showing the site and the vicinity, and one detailed map of the site showing features essential for the management plan objectives; other maps may be useful (*i.e.* geological map of the area, three dimensional terrain model)

B. Biological Features

1. A description of the biological features of the site, in both space and time, which it is the purpose of the management plan to protect.

C. CEMP Studies

1. A full description of the CEMP studies being conducted or planned to be conducted, including the species and parameters which are being or are to be studied.

D. Protection Measures

1. Statements of prohibited activities:
1.1 Throughout the site at all times of the year;
1.2 Throughout the site at defined parts of the year;
1.3 In parts of the site at all times of the year;
1.4 In parts of the site at defined parts of the year
2. Prohibitions regarding access to and movement within or over the site
3. Prohibitions regarding:
3.1 The installation, modification, and/or removal of structures;
3.2 The disposal of waste.
4. Prohibitions for the purpose of ensuring that activity in the site does not prejudice the purposes for which protection status has been accorded to areas or sites, in or near the site, under the Antarctic Treaty or other components of the Antarctic Treaty System which are in force.

E. Communications Information

1. The name, address, telephone and facsimile numbers, and e-mail addresses, of:
1.1 The organisation or organisations responsible for appointing national representative(s) to the Commission;
1.2 The national organisation or organisations conducting CEMP studies at the site.

Notes: 1. A code of conduct. If it would help towards achieving the scientific objectives of the site, a code of conduct may be annexed to the management plan. Such a code should be written in hortatory rather than mandatory terms, and must be consistent with the prohibitions contained in Section D above.

2. Members of the Commission preparing draft management plans for submission in accordance with this conservation measure should bear in mind that the primary purpose of the management plan is to provide for the protection of CEMP studies at the site through the application of the prohibitions contained in Section D. To that end, the management plan is to be drafted in concise and unambiguous terms. Information which is intended to help scientists, or others, appreciate broader considerations regarding the site (*e.g.* historical and bibliographic information) should not be included in the management plan but may be annexed to it.

Conservation Measure 91–02 (2004)

Protection of the Cape Shirreff CEMP Site

Species all
Area 48.1

1. The Commission noted that a program of long-term studies is being

undertaken at Cape Shirreff and the San Telmo Islands, Livingston Island, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognising that these studies may be vulnerable to accidental or wilful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the Cape Shirreff CEMP site, as defined in the Cape Shirreff management plan.

3. Members shall comply with the provisions of the Cape Shirreff CEMP site management plan, which is recorded in Annex 91–02/A.

4. In accordance with Article X, the Commission shall draw this conservation measure to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Annex 91–02/A

Management Plan for the Protection of Cape Shirreff and the San Telmo Islands, South Shetland Islands, as a Site Included in the CCAMLR Ecosystem Monitoring Program [1]

A. Geographical Information

1. Description of the site:

(a) Geographical coordinates: Cape Shirreff is a low, ice-free peninsula towards the western end of the north coast of Livingston Island, South Shetland Islands, situated at latitude 62°27′ S, longitude 60°47′ W, between Barclay Bay and Hero Bay. San Telmo Islands are the largest of a small group of ice-free rock islets, approximately 2 km west of Cape Shirreff.

(b) Natural features: Cape Shirreff is approximately 3 km from north to south and 0.5 to 1.2 km from east to west. The site is characterised by many inlets, coves and cliffs. Its southern boundary is bordered by a permanent glacial ice barrier, which is located at the narrowest part of the cape. The cape is mainly an extensive rock platform, 46 to 83 m above sea level, the bedrock being largely covered by weathered rock and glacial deposits. The eastern side of the base of the cape has two beaches with a total length of about 600 m. The first is a boulder beach, the second of sand. Above this is a raised beach with mosses and lichens, crossed by melt-streams from the snow above. The extremity of the cape has a rocky barrier about 150 m long. The western side is formed by almost continuous cliffs 10 to 15 m high above an exposed coast with a few protected beaches. At the southwestern base of the cape is a small sandy and pebble beach approximately 50 m long. The San Telmo Islands are located approximately 2 km west of Cape Shirreff, and are a group of ice-free, rocky islets. The east coast of San Telmo Island (the largest of the group) has a sandy and pebble beach (60 m) at the south end, separated from the northern sandy beach (120 m) by two irregular cliffs (45 m) and narrow pebble beaches.

(c) Boundary markers: The boundaries of the Cape Shirreff CEMP Protected Area are identical to the boundaries of the Site of Special Scientific Interest No. 32, as specified by ATCM Recommendation XV–7. At present, there are no man-made boundary markers indicating the limits of the SSSI or established protected areas. The boundaries of the site are defined by natural features (*i.e.* coastlines, glacial margins) described in Section A.1(d).

[1] As adopted at CCAMLR–XVIII (paragraphs 9.5 and 9.6), and revised at CCAMLR–XIX (paragraph 9.9).

(d) Natural features that define the site: The Cape Shirreff CEMP Protected Area includes the entire area of the Cape Shirreff peninsula north of the glacier ice tongue margin, and most of the San Telmo Islands group. For the purposes of the CEMP protected area, 'the entire area' of Cape Shirreff and the San Telmo Islands group is defined as any land or rocks exposed at mean low tide within the area delimited by the map (Figure 3).

(e) Access points: The Cape Shirreff part of the CEMP site may be entered at any point where pinniped or seabird rookeries are not present on or near the beach. Access to the island in the San Telmo group is unrestricted but should be at the least densely populated areas and cause minimal disturbance to the fauna. Access for other than CEMP research should avoid disturbing pinnipeds and seabirds (*see* Sections D.1 and D.2). Access by small boat or helicopter is recommended in most circumstances. Four helicopter landing areas are recommended including: (i) The south plain of Playa Yámana, which is situated on the Southwest coast of the cape; (ii) on the west coast of the cape, on the top plain of Gaviota Hill (10 x 20 m), near the monument erected to commemorate the officers and crew of the Spanish ship San Telmo; (iii); the wide plain, Paso Ancho, situated to the east of Cóndor Hill; and (iv) the top plain of Cóndor Hill. Recommended sites for landing small boats include: (i) the northern end of Half Moon beach, on the east coast of the cape; (ii) on the east coast, 300 m north of El Mirador, there is a deep channel which permits easy disembarkation, and (iii) the northern end of Playa Yámana on the west coast of the cape (during high tide conditions). There are no landing sites for fixed-wing aircraft.

(f) Pedestrian and vehicular routes: Boats, helicopters, fixed-wing aircraft and land vehicles should avoid the site except for operations directly supporting authorised scientific activities. During these operations, boats and aircraft should travel routes that avoid or minimise disturbance of pinnipeds and seabirds. Land vehicles should not be used except to transport needed equipment and supplies to and from the field camps. Pedestrians should not walk through wildlife population areas, especially during the breeding season, or disturb other fauna or flora except as necessary to conduct authorised research.

(g) Preferred anchorages: Numerous shoals and pinnacles are known to exist in the vicinity of Cape Shirreff and the San Telmo Islands. The detailed bathymetric chart No. 14301 produced by the Servicio Hidrográfico y Oceanográfico de la Armada de Chile (SHOA, 1994) provides guidance but those unfamiliar with local conditions at Cape Shirreff are advised to approach the area with caution. Three anchorages that have been used in the past are: (i) Northwest coast—situated between Rapa-Nui Point on Cape Shirreff and the northern extremity of the San Telmo Islands; (ii) east coast—2.5 km to the east of El Mirador, being alert for icebergs drifting in the area; and (iii) south coast—located about 4 km off the southern coast of Byers Peninsula to support ship-based helicopter operations. Organisation(s) conducting CEMP studies at the site can provide further details about sailing instructions pertaining to recommended anchorages (*see* Section E.2).

(h) Location of structures within the site: During the 1991/92 austral summer, a fibreglass cabin for four people was installed by the Instituto Antártico Chileno (INACH) (Anonymous, 1992) in the El Mirador area. This area is on the cape's east coast, at the base of Condor Hill (near the site of the previous installation of the former Soviet Union). This site was chosen because of its accessibility by helicopter and boat, shelter from winds, good water supply and absence of seal or bird colonies. During the 1996/97 austral summer a U.S. AMLR field camp was established approximately 50 m to the south of the INACH camp. The U.S. camp is comprised of four small wood-

constructed buildings (including an outhouse); all within 3 m of each other and jointed by wooden walkways. In February 1999 an emergency shelter/bird observation blind was constructed by the U.S. program at the northern end of the Cape. Minor remains of a hut used in the past by the former Soviet Union as well as sparse evidence of a 19th century sealers' camp can be found near the camp site.

(i) Areas within the site where activities are constrained: The protection measures specified in Section D apply to all areas within the Cape Shirreff CEMP Protected Area, as defined in Section A.1(d).

(j) Location of nearby scientific, research, or refuge facilities: The nearest research facility to the site is Juan Carlos I Station (summer only) maintained by the Spanish government at South Bay, Livingston Island, (62°40′ S, 60°22′ W), approximately 30 km southeast of Cape Shirreff. The Chilean Station Arturo Prat is located on Greenwich Island (62°30′ S, 59°41′ W) approximately 56 km northeast of Cape Shirreff. Numerous scientific stations and research facilities (*e.g.* Argentina, Brazil, Chile, China, Korea, Poland, Russia, Uruguay) are located on King George Island, approximately 100 km northeast of Cape Shirreff. The largest of these facilities is Base Presidente Eduardo Frei Montalva (also formerly referred to as Base Teniente Rodolfo Marsh Martin), maintained by the Chilean government on the western end of King George Island (62°12′ S, 58°55′ W).

(k) Areas or sites protected under the Antarctic Treaty System: Cape Shirreff and the San Telmo Islands are protected as a Site of Special Scientific Interest (No. 32) under the Antarctic Treaty System (see Section A.1(c)). Several other sites or areas within 100 km of Cape Shirreff are also protected under the Antarctic Treaty System: SSSI No. 5, Fildes Peninsula (62°12′ S, 58°59′ W); SSSI No. 6, Byers Peninsula (62°38′ S, 61°05′ W); SSSI No. 35, Ardley Island, Maxwell Bay, King George Island (62°13′ S, 58°56′ W); Marine SSSI No. 35, Western Bransfield Strait (63°20′ S to 63°35′ S, 61°45′ W to 62°30′ W); and SPA No. 16, Coppermine Peninsula, Robert Island (62°23′ S, 59°44′ W). The Seal Islands CEMP Protected Area (60°59′14″ S, 55°23′04″ W) is located approximately 325 km northeast of Cape Shirreff.

2. Maps of the site:

(a) Figures 1 and 2 show the geographical position of Cape Shirreff and the San Telmo Islands in relation to major surrounding features, including the South Shetland Islands and adjacent bodies of water.

(b) Figure 3 identifies the boundaries of the site and provides details of specific locations within the vicinity of Cape Shirreff and the San Telmo Islands, including preferred vessel anchorages.

B. Biological Features

1. Terrestrial: There is no information on soil biology of Cape Shirreff but it is likely that similar types of plants and invertebrates are found as at other sites in the South Shetland Islands (*e.g.* see Lindsey, 1971; Allison and Smith, 1973; Smith, 1984; Sömme, 1985). A moderate lichen cover (*e.g.* Polytrichum alpestre, Usnea fasciata) is present on rocks located in the higher geological platforms. In some valleys there are patches of moss and grass (*e.g. Deschampsia antarctica*).

2. Inland waters: There are several ephemeral ponds and streams located at Cape Shirreff. These form from melting snow, especially in January and February. Hidden Lake is the only permanent body of water on the cape, and it is located in the confluence of the slope of three hills: El Toqui, Pehuenche and Aymara. The lake's drainage supports the growth of moss banks along its northeast and southwest slopes. From the southwest slope a stream flows to the western coast at Playa Yámana. The lake's depth is estimated at two to 3 m and it is approximately 12 m long when fullest; the lake diminishes considerably in size after February (Torres, 1995). There are no known lakes or ephemeral ponds of significance on the San Telmo Islands.

3. Marine: No studies on littoral communities have been carried out. There is abundant macroalgae present in the intertidal zone. The limpet Nacella concinna is common, as elsewhere in the South Shetland Islands.

4. Seabirds: In January 1958, 2 000 pairs of chinstrap penguins (*Pygoscelis antarctica*) and 200 to 500 pairs of gentoo penguins (P. papua) were reported (Croxall and Kirkwood, 1979). In 1981 two unspecified penguin colonies had 4 328 and 1 686 individuals respectively (Sallaberry and Schlatter, 1983). A census in January 1987, produced estimates of 20 800 adult chinstrap penguins and 750 adult gentoo penguins (Shuford and Spear, 1987). Hucke-Gaete *et al.* (1997a) identified the presence of 31 breeding colonies for both species during 1996/97 and reported estimates of 6 907 breeding pairs of chinstrap penguins and 682 of gentoo penguins. A chick census developed in early February that same year gave a total of 8 802 chinstrap penguins and 825 gentoo penguins. The first of a continuing CCAMLR census of the colonies at Cape Shirreff conducted on 3 December, 1997 recorded 7 617 and 810 breeding pairs of chinstrap and gentoo penguins, respectively (Martin 1998). Dominican gulls (*Larus domincanus*), brown skuas (*Catharacta lönnbergi*), Antarctic terns (*Sterna vittata*), blue-eyed shags (*Phalacrocorax atriceps*), cape petrels (*Daption capense*), Wilson's storm petrels (*Oceanites oceanicus*) and black-bellied storm petrel (*Fregetta tropica*) also nest on the cape. Giant petrels (*Macronectes giganteus*) are regular visitors during the austral summer (Torres, 1995).

5. Pinnipeds: Cape Shirreff is presently the site of the largest known breeding colony of the Antarctic fur seal (*Arctocephalus gazella*) in the South Shetland Islands. The first post-exploitation record of fur seals at Cape Shirreff was reported by O'Gorman (1961) in mid-February 1958 when 27 non-breeding adults were seen. Over the past 30 years, the colony has continued to increase in size (Aguayo and Torres, 1968, 1993; Bengtson *et al.*, 1990, Torres, 1995; Hucke-Gaete *et al.*, 1999). Annual censuses begun in 1991/92 by INACH scientists showed that pup production has increased every year except for 1997/98 when there was an apparent 14% decrease in the entire SSSI. From 1965/66 to 1998/99 the population increased at a rate of 19.8%. However, from 1992/93 to 1998/99 the growth rate has decreased to ca. 7% per year, with the last census in 1998/99 reporting 5 497 pups born on Cape Shirreff and 3 027 pups born on San Telmo Islands (Hucke-Gaete *et al.*, 1999). Groups of non-breeding southern elephant seals (*Mirounga leonina*), Weddell seals (*Leptonychotes weddelli*), leopard seals (*Hydrurga leptonyx*) and crabeater seals (*Lobodon carcinophagus*) have been observed on the cape (O'Gorman, 1961; Aguayo and Torres, 1967; Bengtson *et al.*, 1990; Torres *et al.*, 1998). Additionally, observations of pup carcasses suggest breeding sites of southern elephant seals (Torres, 1995).

C. CEMP Studies

1. The presence at Cape Shirreff of both Antarctic fur seal and penguin breeding colonies, and of krill fisheries within the foraging range of these species, make this a critical site for inclusion in the ecosystem monitoring network established to help meet the objectives of the Convention on the Conservation of Antarctic Marine Living Resources. The purpose of the designation is to allow planned research and monitoring to proceed, while avoiding or reducing, to the greatest extent possible, other activities which could interfere with or affect the results

of the research and monitoring program or alter the natural features of the site.

2. The following species are of particular interest for CEMP routine monitoring and directed research at this site: Antarctic fur seals, chinstrap penguins and gentoo penguins.

3. Long-term studies are under way to assess and monitor the feeding ecology, growth and condition, reproductive success, behaviour, and population dynamics of pinnipeds and seabirds that breed in the area. The results of these studies will be compared with environmental data, wildlife diseases, offshore sampling data, and fishery statistics to identify possible cause-effect relationships.

4. Chilean scientists have been conducting studies at the site for many years and in recent seasons they have developed studies specifically designed to contribute to CEMP. These studies have mainly focused on Antarctic fur seals, wildlife diseases and survey of marine debris. Annual marine debris surveys began in 1985, with a baseline established in 1994 (*e.g.* Torres and Jorquera 1995, 1999). In 1996/97 U.S. scientists began CEMP monitoring studies of Antarctic fur seals, chinstrap and gentoo penguins in conjunction with studies of offshore prey distribution and general oceanography (*e.g.* Martin, 1999).

5. Penguin parameters routinely monitored include trends in population size (A3), demography (A4), duration of foraging trips (A5), breeding success (A6), chick fledging weight (A7), chick diet (A8) and breeding chronology (A9). Studies of fur seals include foraging energetics, at-sea foraging locations using satellite-linked telemetry, diving behaviour, diet studies, duration of foraging trips (C1), reproductive success, and pup growth rates (C2).

D. Protection Measures

1. Prohibited activities and temporal constraints:

(a) Throughout the site at all times of the year: Any activities which damage, interfere with, or adversely affect the planned CEMP monitoring and directed research at this site are not permitted.

(b) Throughout the site at all times of the year: Any non-CEMP activities are not permitted which result in:

(i) Killing, injuring, or disturbing pinnipeds or seabirds;

(ii) Damaging or destroying pinniped or seabird breeding areas; or

(iii) Damaging or destroying the access of pinnipeds or seabirds to their breeding areas.

(c) Throughout the site at defined parts of the year: Human occupation of the site during the period 1 June to 31 August is not permitted except under emergency circumstances.

(d) In parts of the site at all times of the year: Building structures within boundaries of any pinniped or seabird colony is not permitted. For this purpose, colonies are defined as the specific locations where pinniped pups are born or where seabird nests are built. This prohibition does not pertain to placing markers (*e.g.* numbered stakes, posts, etc.) or situating research equipment in colonies as may be required to facilitate scientific research.

(e) In parts of the site at defined parts of the year: Entry into any pinniped or seabird colonies during the period 1 September to 31 May is not permitted except in association with CEMP activities.

2. Prohibitions regarding access to and movement within the site:

(a) Entry to the site at locations where pinniped or seabird colonies are present in densely populated areas is not permitted.

(b) Aircraft overflight of the site is not permitted at altitudes less than 1 000 m unless the proposed flight plan has been reviewed in advance by the organisation(s) conducting CEMP activities at the site (*see* Section E.2). Aircraft overflight at altitudes below 200 m is not permitted.

(c) The use of land vehicles is not permitted except to transport needed equipment and supplies to and from the field camps.

(d) Pedestrians are not permitted to walk through wildlife population areas (*e.g.* colonies, resting areas, pathways), or to disturb other fauna or flora, except as necessary to conduct authorised research.

3. Prohibitions regarding structures:

(a) Building structures other than those directly supporting authorised scientific research and monitoring programs or to house research personnel and their equipment is not permitted.

(b) Human occupation of these structures is not permitted during the period 1 June to 31 August (*see* Section D.1(c)).

(c) New structures are not permitted to be built within the site unless the proposed plans have been reviewed in advance by the organisation(s) conducting CEMP activities at the site (*see* Section E.2).

4. Prohibitions regarding waste disposal:

(a) Landfill disposal of any materials is not permitted; all materials brought to the site are to be removed when no longer in use.

(b) Disposal of waste fuels, volatile liquids and scientific chemicals within the site is not permitted; these materials are to be removed from the site for proper disposal elsewhere.

(c) The open burning of any materials is not permitted (except for properly used fuels for heating, lighting or cooking).

5. Prohibitions regarding the Antarctic Treaty System: It is not permitted to undertake any activities in the Cape Shirreff CEMP Protected Area which are not in compliance with the provisions of: (i) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora and the Protocol on Environmental Protection, (ii) the Convention for the Conservation of Antarctic Seals, and (iii) the Convention for the Conservation of Antarctic Marine Living Resources.

E. Communications Information

1. Organisation(s) appointing national representatives to the Commission.

(a) Ministerio de Relaciones Exteriores, Direccion de Medio Ambiente (DIMA), Catedral 1143, 2° Piso, Santiago, Chile, Telephone: +56 (2) 679 4720, Facsimile: +56 (2) 673 2152, E-mail: *mlcarvallo@minrel.gov.cl.*

(b) Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State, Washington, DC 20520, USA, Telephone: +1 (202) 647 3262, Facsimile: +1 (202) 647 1106.

2. Organisation(s) conducting CEMP studies at the site.

(a) Ministerio de Relaciones Exteriores, Instituto Ant´rtico Chileno, Plaza Muñoz Gamero 1055, Punta Arenas, Chile, Telephone: +56 (61) 29 8100, Facsimile: +56 (61) 29 8149, E-mail: *dtorres@inach.cl.*

(b) U.S. Antarctic Marine Living Resources Program, National Marine Fisheries Service, NOAA, Southwest Fisheries Science Center, PO Box 271, La Jolla, Ca 92038, USA, Telephone: +1 (858) 546 5601, Facsimile: +1 (858) 546 5608, E-mail: *rennie.holt@noaa.gov.*

Annex 91–02/A

Cape Shirreff, Appendix 1

Code of Conduct for the Cape Shirreff CEMP Protected Area

Investigators should take all reasonable steps to ensure that their activities, both in implementing their scientific protocols as well as in maintaining a field camp, do not unduly harm or alter the natural behaviour and ecology of wildlife. Wherever possible, actions should be taken to minimise disturbance of the natural environment. Killing, capturing, handling and taking eggs, blood, or other biological samples from pinniped and seabirds should be

limited to that necessary to characterise and monitor individual and population parameters that may change in detectable ways in response to changes in food availability or other environmental factors. Sampling should be done and reported in accordance with: (i) The Agreed Measures for the Conservation of Antarctic Fauna and Flora and the Protocol on Environmental Protection, (ii) the Convention for the Conservation of Antarctic Seals, and (iii) the Convention for the Conservation of Antarctic Marine Living Resources. Geological, glaciological and other studies which can be done outside of the pinniped and seabird breeding season, and which will not damage or destroy pinniped or seabird breeding areas, or access to those areas, would not adversely affect the planned assessment and monitoring studies. Likewise, the planned assessment and monitoring studies would not be affected adversely by periodic biological surveys or studies of other species which do not result in killing, injuring, or disturbing pinnipeds or seabirds, or damage or destroy pinnipeds or seabird breeding areas or access to those areas.

Annex 91–02/A

Cape Shirreff, Appendix 2

Background Information Concerning Cape Shirreff

Prior to 1819, there were substantial colonies of fur seals, and possibly elephant seals, throughout the South Shetland Islands archipelago. Thereafter, Cape Shirreff was the scene of more intensive sealing activities until about 1825. Sealers' refuges were erected all around the western shores of Livingston Island, with those on the south coast being occupied mainly by American sealers and those on the north coast by British sealers. There were about 60 to 75 men living ashore at Cape Shirreff in January 1821 (Stackpole, 1955) and 95 000 skins were taken during the 1821/22 season (O'Gorman, 1963). There are ruins of at least 12 sealers' huts on the cape and the shoreline in several bays is littered with timbers and sections of wrecked sealers' vessels (Torres, 1995). The outcome of the sealing of the early 1820s was the extermination of fur seals from the entire region. Antarctic fur seals were not observed again in the South Shetland Islands until 1958, when a small colony was discovered at Cape Shirreff, Livingston Island (O'Gorman, 1961). The original colonisers probably came from South Georgia, where surviving fur seal colonies had substantially recovered by the early 1950s. Chilean studies at the site began in 1965 (*e.g.* Aguayo and Torres, 1967, 1968) and U.S. studies began in 1996 (*e.g.* Martin, 1998). At present, the fur seal rookeries at Cape Shirreff and the San Telmo Islands are the largest in the South Shetland Islands.

Annex 91–02/A

Cape Shirreff, Appendix 3

History of Protection at Cape Shirreff

Cape Shirreff was designated in 1966 as Specially Protected Area (SPA) No. 11 by ATCM Recommendation IV–11 'on the grounds that the cape supports a considerable diversity of plant and animal life, including many invertebrates, that a substantial population of elephant seals (*Mirounga leonina*) and small colonies of Antarctic fur seals are found on the beaches and that the area is of outstanding interest'. The protection conferred on this site was successful in ensuring that Antarctic fur seals were not disturbed during the important early phases of their recolonisation. Subsequent to the site's designation as a SPA, the locally breeding population of Antarctic fur seals increased to a level at which biological research activities could be undertaken without threatening the continued recolonisation and population increase of this species. Surveys during the mid-1980s to locate study sites for long-term monitoring of fur seal and penguin populations as part of the CCAMLR Ecosystem Monitoring Program (CEMP) indicated that Cape Shirreff would be an excellent site within the Antarctic Peninsula Integrated Study Region. To carry out such a monitoring program safely and effectively, a multi-year field camp for four to six researchers was needed within the area previously designated as SPA No. 11. This might have been considered inappropriate within a SPA and hence a proposal was made in 1988 to redesignate Cape Shirreff as a Site of Special Scientific Interest (SSSI). Additionally, it was proposed substantially to enlarge the site by the inclusion of the San Telmo Islands group, presently the location of the largest fur seal colony in the Antarctic Peninsula region.

Cape Shirreff was redesignated in 1990 as SSSI No. 32 by Recommendation XV–7, which was adopted by the XVth Consultative Meeting of the Antarctic Treaty. It was understood that SSSI No. 32, Cape Shirreff, should be redesignated an SPA (in its enlarged form) if and when the long-term monitoring of fur seals and seabirds at the site should be ended. Chilean and U.S. scientists initiated CEMP studies at Cape Shirreff during the late 1980s, and have collaborated on predator studies at Cape Shirreff since 1996/97. To further protect the site from damage or disturbance that could adversely affect the long-term CEMP monitoring and directed research, in 1991 Cape Shirreff was proposed as a CEMP Protected Area.

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Figures 1 and 2: These maps show the general position of Cape Shirreff and the San Telmo Islands CEMP Protected Area (Figure 1) and the location of the CEMP Protected Area in elation to the northwestern portion of Livingston Island.

Figure 3: This map shows a detailed view of the Cape Shirreff and the San Telmo Islands CEMP Protected Area. Note that the boundaries of the CEMP Protected Area are identical to the boundaries of Site of Special Scientific Interest No. 32, which is protected under the Antarctic Treaty.

Conservation Measure 91–03 (2004)

Protection of the Seal Islands CEMP Site

Species all
Area 48.1

1. The Commission noted that a program of long-term studies is being undertaken at SealIslands, South Shetland Islands, as part of the CCAMLR Ecosystem MonitoringProgram (CEMP). Recognising that these studies may be vulnerable to accidental or wilful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the SealIslands CEMP site, as defined in the Seal Islands management plan.

3. Members are required to comply with the provisions of the Seal Islands CEMP site management plan, which is recorded in Annex 91–03/A.

4. In accordance with Article X, the Commission shall draw this conservation measure to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Annex 91–03/A

Management Plan for the Protection of Seal Islands, South Shetland Islands, as a Site Included in the CCAMLR Ecosystem Monitoring Program [2]

A. Geographical Information

1. Description of the site:

(a) Geographical coordinates: The Seal Islands are composed of small islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Area includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is the largest island of the group, and is situated at 60°59′14″ S, 55°23′04″ W (coordinates are given for the point of highest elevation on the island—see Figures 1 and 2).

(b) Natural features: The Seal Islands cover an area approximately 5.7 km from east to west and 5 km from north to south. Seal Island is approximately 0.7 km long and 0.5 km wide. It has an altitude of about 125 m, with a raised plateau at about 80 m, and precipitous cliffs on most coastlines. There is a raised, sandy beach on the western shore and several coves on the northern and eastern shores. Seal Island is joined to the adjacent island to the west by a narrow sand bar that is approximately 50 m long; the bar is rarely passable on foot, and only when seas are calm and the tide is very low. Other islands in the group are similar to Seal Island, with precipitous cliffs, exposed coasts, and a few sand beaches and protected coves. There is no permanent ice on any of the islands. Seal Island is mainly composed of poorly consolidated sedimentary rocks. Rocks crumble and fracture easily, resulting in prevalent erosion from water runoff and coastal wave action. Geologists have characterised the bedrock 'pebbly mudstone'. No fossils have been reported from the site. Because colonies of penguins are present in virtually all sectors of Seal Island (including the summit), the soil in many areas as well as several vertical rock faces are enriched by guano.

(c) Boundary markers: As of 1997, no man-made boundary markers indicating the limits of the protected area had been established. The boundaries of the site are defined by natural features (*i.e.* coastlines).

(d) Natural features that define the site: The Seal Islands CEMP Protected Area includes the entire Seal Islands group (see Section A.1(a) for definition). No buffer zones are defined for the site.

(e) Access points: The site may be accessed by boat or aircraft at any point where pinnipeds and seabirds will not be adversely affected (see Sections D.1 and D.2). Access by small boat is recommended in most circumstances because the number of beach landing spots for helicopters (which must approach these spots by flying over water rather than over land) is very limited. There are no landing sites for fixed-winged aircraft.

[2] As adopted at CCAMLR–XVI (paragraphs 9.67 and 9.68), and revised at CCAMLR–XIX (paragraph 9.9).

(f) Pedestrian and vehicular routes: Pedestrians should follow the advice of the local scientists in selecting pathways which will minimise disturbance to wildlife (see Section D.2(d)). Land vehicles are not permitted except in the immediate vicinity of the field camp and the beach (see Section D.2(c)).

(g) Preferred anchorages: Numerous shoals and pinnacles are known to exist in the vicinity of the Seal Islands, and navigation charts of the area are incomplete. Most ships visiting the area recently have preferred an anchorage spot approximately 1.5 km to the southeast of Seal Island (Figure 2), which has a rather consistent depth of

approximately 18 m. A second anchorage utilised by smaller vessels is located approximately 0.5 km to the northeast of Seal Island (Figure 2) at a depth of about 20 m. Organisation(s) conducting CEMP studies at the site can provide further details about sailing instructions pertaining to these anchorages (see Section E.2).

(h) Location of structures within the site: As of March 1999 no structures remained on Seal Island. Between 1996 and 1999, all structures were dismantled and retrograded from the island.

(i) Areas within the site where activities are constrained: The protection measures specified in Section D apply to all areas within the Seal Islands Protected Area, as defined in Section A.1(d).

(j) Location of nearby scientific research or refuge facilities: The nearest research facility to the site is the scientific field camp maintained by the Brazilian government at Stinker Point, Elephant Island (61°04′ S, 55°21′ W), which is approximately 26 km south of Seal Island. However in some years this site is not occupied. Numerous scientific stations and research facilities are located on King George Island, which is approximately 215 km southwest of Seal Island.

(k) Areas or sites protected under the Antarctic Treaty System: No areas or sites within or near (*i.e.* within 100 km) the Seal Island Protected Area have been accorded protected status in accordance with measures adopted under the Antarctic Treaty or other components of the Antarctic Treaty System which are in force.

2. Maps of the site:

(a) Figure 1 shows the geographical position of the Seal Islands in relation to major surrounding features, including the South Shetland Islands and adjacent bodies of water.

(b) Figure 2 illustrates the location of the entire Seal Islands archipelago and preferred vessel anchorages. The detailed insert of Seal Island in Figure 2 shows the location of structures associated with CEMP studies and the location of the point of highest elevation (indicated by a cross).

B. Biological Features

1. Terrestrial: There is no information on soil biology at Seal Island but it is likely that similar types of plants and invertebrates are found as at other sites in the South Shetland Islands. Lichens are present on stable rock surfaces. There is no evidence of well-developed moss or grass banks being present on Seal Island.

2. Inland waters: There are no known lakes or ephemeral ponds of significance on Seal Island.

3. Marine: No studies on littoral communities have been carried out.

4. Birds: Seven species of birds are known to breed on the Seal Islands: chinstrap penguins (*Pygoscelis antarctica*), macaroni penguins (*Eudyptes chrysolophus*), Cape petrels (*Daption capense*), Wilson's storm petrels (*Oceanites oceanicus*), southern giant petrels (*Macronectes giganteus*), southern black-backed gulls (*Larus dominicanus*) and American Sheathbills (*Chionis alba*). The chinstrap penguin population on Seal Island numbers approximately 20 000 breeding pairs, nesting in about 60 colonies throughout the island. About 350 pairs of macaroni penguins nest on Seal Island in five separate colonies. The nesting and chick-rearing period for chinstrap and macaroni penguins at Seal Island extends from November to March. No surveys have been made of Cape petrel or storm petrel populations, however, both species are numerous; the Cape petrels nest on cliff faces and the storm petrels nest in burrows in the talus slopes. Brown skuas (*Catharacta lönnbergi*) are common. Blue-eyed shags (*Phalacrocorax atriceps*), Adélie penguins (*Pygoscelis adeliae*), gentoo penguins (*Pygoscelis papua*), king penguins (*Aptenodytes patagonicus*) and rockhopper penguins (*Eudyptes chrysocome*) are among the avian visitors to the area.

5. Pinnipeds: Five species of pinnipeds have been observed at Seal Island: Antarctic fur seals (*Arctocephalus gazella*), southern elephant seals (*Mirounga leonina*), Weddell seals (*Leptonychotes weddellii*), leopard seals (*Hydrurga leptonyx*) and crabeater seals (*Lobodon carcinophagus*). Of these, fur seals are the only confirmed breeders on the island, although small numbers of elephant seals probably breed on the island early in the spring. During the last few years approximately 600 fur seal pups have been born in the Seal Islands group, with approximately half of these born on Seal Island and half on Large Leap Island (Figure 2). The fur seal pupping and pup-rearing period at Seal Island extends from late November to early April. During the austral summer, elephant seals are ashore during their moult period; Weddell seals regularly haul out on the beaches; crabeater seals are infrequent visitors; and leopard seals are common both ashore and in coastal waters where they prey on penguins and fur seal pups.

C. CEMP Studies

1. The presence at the Seal Islands of both Antarctic fur seal and penguin breeding colonies, as well as significant commercial krill fisheries within the foraging range of these species make this an excellent site for inclusion in the CEMP network of sites established to help meet CCAMLR objectives. However, recent geological assessments of Seal Island have indicated that soil composition of cliff areas above and around the camp site are unstable and might result in catastrophic failure during periods of intense rainfall. Therefore, in 1994 the AMLR Program terminated its research at Seal Island and between 1996 and 1999 dismantled and retrograded all camp and observation blind structures.

2. No CEMP studies are being conducted at Seal Island and the USA has no plans to occupy the site in the future except to conduct seal and bird censuses.

D. Protection Measures

1. Prohibited activities and temporal constraints:

(a) Throughout the site at all times of the year. Any activities which damage, interfere with, or adversely affect CEMP monitoring and directed research which potentially could be conducted at this site are not permitted.

(b) Throughout the site at all times of the year. Any non-CEMP activities are not permitted which result in:

(i) Killing, injuring, or disturbing pinnipeds or seabirds;

(ii) Damaging or destroying pinniped or seabird breeding areas; or

(iii) Damaging or destroying the access of pinnipeds or seabirds to their breeding areas.

(c) Throughout the site at defined parts of the year: Human occupation of the site during the period 1 June to 31 August is not permitted except under emergency circumstances.

(d) In parts of the site at all times of the year: Building structures within the boundaries of any pinniped or seabird colony is not permitted. For this purpose, colonies are defined as the specific locations where pinniped pups are born or where seabird nests are built. This prohibition does not pertain to placing markers (*e.g.* numbered stakes, posts etc.) or situating research equipment in colonies as may be required to facilitate scientific research.

(e) In parts of the site at defined parts of the year: Entry into any pinniped or seabird colonies during the period 2 September to 31 May is not permitted except in association with CEMP activities.

2. Prohibitions regarding access to and movement within or over the site:

(a) Entry of the site at locations where pinniped or seabird colonies are present in the immediate vicinity is not permitted.

(b) Aircraft overflight of the site is not permitted at altitudes less than 1 000 m unless the proposed flight plan has been reviewed in advance by the organisation(s) conducting CEMP activities at the site (*see* Section E.2).

(c) The use of land vehicles is not permitted except to transport equipment and supplies to and from the field camp.

(d) Pedestrians are not permitted to walk through areas used regularly by pinnipeds and seabirds (*i.e.* colonies, resting areas, pathways) or to disturb other fauna or flora, except as necessary to conduct authorised research.

3. Prohibitions regarding structures:

(a) New structures are not permitted to be built within the site unless the proposed plans have been reviewed in advance by the organisation(s) conducting CEMP activities at the site (*see* Section E.2).

(b) Building structures other than those directly supporting CEMP directed scientific research and monitoring activities or to house personnel and/or their equipment is not permitted.

(c) Human occupation of these structures is not permitted during the period 1 June to 31 August (*see* Section D.1(c)).

4. Prohibitions regarding waste disposal:

(a) Landfill disposal of non-biodegradable materials is not permitted; non-biodegradable materials brought to the site are to be removed when no longer in use.

(b) Disposal of waste fuels, volatile liquids and scientific chemicals within the site is not permitted; these materials are to be removed from the site for proper disposal elsewhere.

(c) The burning of any non-organic materials or the open burning of any materials is not permitted (except for properly used fuels for heating, lighting, cooking or electricity).

5. Prohibitions regarding the Antarctic Treaty System:

It is not permitted to undertake any activities in the Seal Islands CEMP Protected Area which are not in compliance with the provisions of: (i) the Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora; (ii) the Convention on the Conservation of Antarctic Seals; and (iii) the Convention on the Conservation of Antarctic Marine Living Resources.

E. Communications Information

1. Organisation(s) appointing national representatives to the Commission: Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State, Washington, DC 20520, USA, Telephone: +1 (202) 647 3262, Facsimile: +1 (202) 647 1106.

2. Organisation(s) which potentially might conduct CEMP studies at the site: US Antarctic Marine Living Resources Program, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, PO Box 271, La Jolla, Ca. 92038, USA, Telephone: +1 (858) 546 5601, Facsimile: +1 (858) 546 5608.

Annex 91–03/A

Seal Islands, Appendix 1

Code of Conduct for the Seal Islands, Antarctica

Investigators should take all reasonable steps to ensure that their activities, both in implementing their scientific protocols as well as in maintaining a field camp, do not unduly harm or alter the natural behaviour and ecology of wildlife in the Seal Islands. Wherever possible, actions should be taken to minimise disturbance of the natural environment. Capturing, handling, killing, photographing and taking eggs, blood or other biological samples from pinnipeds and seabirds should be limited to that necessary to provide essential background information or to characterise and monitor individual and population parameters that may change in detectable ways in response to changes in food availability or other environmental factors. Sampling should be done and reported in accordance with: (i) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora; (ii) the Convention for the Conservation of Antarctic Seals; and (iii) the Convention on the Conservation of Antarctic Marine Living Resources. Geological and other studies which can be done inside of the pinniped and seabird breeding seasons in such a way as they do not damage or destroy pinniped or seabird breeding areas, or access to those areas, would be permitted as long as they would not adversely affect the planned assessment and monitoring studies. Likewise, the planned assessment and monitoring studies would not be affected adversely by periodic biological surveys or studies of other species which do not result in killing, injuring or disturbing pinnipeds or seabirds, or damage or destroy pinnipeds or seabird breeding areas or access to those areas.

Annex 91–03/A

Seal Islands, Appendix 2

Background Information Concerning the Seal Islands, Antarctica

Prior to 1819, there were substantial colonies of fur seals, and possible elephant seals, throughout the South Shetland Islands archipelago. Thereafter, commercial exploitation increased and, by the mid-1820s, fur seal breeding colonies had been completely destroyed throughout the South Shetland Islands (Stackpole, 1955; O'Gorman, 1963). Antarctic fur seals were not observed again in the South Shetland Islands until 1958, when a small colony was discovered at Cape Shirreff, Livingston Island (O'Gorman, 1961). The original colonisers probably came from South Georgia where surviving fur seal colonies had substantially recovered by the early 1950s. At present, the fur seal rookeries in the Seal Islands group are the second largest in the South Shetland Islands, with the largest rookeries being at Cape Shirreff and Telmo Islands, Livingston Island (Bengtson *et al.*, 1990). During the past three decades, the population of Antarctic fur seals in the South Shetland Islands grew to a level at which tagging or other research could be undertaken at selected locations without threatening the population's continued existence and growth. During the 1986/87 austral summer, researchers from the USA surveyed areas on the South Shetland Islands and the Antarctic Peninsula to identify fur seal and penguin breeding colonies that might be suitable for inclusion in the network of CEMP monitoring sites being established. The results of that survey (Shuford and Spear, 1987; Bengtson *et al.*, 1990), suggested that the Seal Island area would be an excellent site for long-term monitoring of fur seal and penguin colonies that might be affected by fisheries in the Antarctic Peninsula Integrated Study Region. To safely and effectively carry out a long-term monitoring program, a temporary, multi-year field camp for a small group of researchers was established on Seal Island. This camp was occupied annually by U.S. scientists during the austral summer (approximately December to February) between 1986/87 and 1993/94. Because of the geological assessment that the cliff areas above and around the camp site are unstable and might result in catastrophic failure during periods of intense rainfall, the camp was closed. Between 1995/96 and 1998/99 all buildings, equipment, and supplies were retrograded from the

island. In 1991, to protect the site from damage or disturbance that could adversely affect the long-term CEMP monitoring and directed research which were being conducted and planned for the future, the Seal Islands were proposed as a CEMP Protected Area. At its 1997 meeting (SC–CAMLR–XVI, paragraphs 4.17 to 4.20), the CCAMLR Scientific Committee reviewed the status of the Seal Island CEMP site management plan. Based on the expectation that research at the site would end, the Scientific Committee agreed that site protection would be extended for five years.

Bibliography

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Resolution 21/XXIII

Electronic Catch Documentation Scheme for Dissostichus spp.

Species toothfish
Area all
Season all
Gear all

The Commission, Noting the successful implementation of the trial electronic Catch Documentation Scheme for *Dissostichus* spp. (E–CDS) during the intersessional period, Desiring to ensure that *Dissostichus* Catch Documents are handled in the most efficient and timely way, Aware of the importance of applying the best technologies to make the functioning of the Catch Documentation Scheme for Dissostichus spp. (CDS) more secure against, *inter alia,* possible fraudulent activities; Noting that, whilst paper-based *Dissostichus* Catch Documents will, for the time being, also be retained, some Contracting Parties are already converting to electronic systems,

1. Urges Contracting Parties, and non-Contracting Parties cooperating in the CDS, to adopt the E–CDS as a matter of priority.

2. Requests the Secretariat to compile information relating to, and submit a report on, the implementation of the E–CDS so that the effectiveness of the electronic scheme can be reviewed at the next meeting of the Commission.

Resolution 22/XXIII

International Actions To Reduce the Incidental Mortality of Seabirds Arising From Fishing

Species toothfish
Area all
Season all
Gear all

The Commission, Recollecting [1] that together with the potential impact of illegal, unregulated and unreported (IUU) fishing for toothfish within the Convention Area, the greatest current threat to species and populations of Southern Ocean seabirds breeding in the Convention Area is mortality in longline fisheries in waters outside the Convention Area,

Noting that the seabirds caught are almost entirely albatrosses and petrels and of species which are threatened with global extinction [2], Concerned at increasing evidence of incidental mortality of seabirds in trawl fisheries, especially in waters outside the Convention Area [3], Noting the substantial reduction [4] of incidental mortality of seabirds in the Convention Area as a result of conservation measures implemented by the Commission, Concerned that, despite such measures, many populations of albatross species breeding in the Convention Area continue to decline [5],

Noting reports of substantial levels and rates of incidental mortality of seabirds breeding in the Convention Area in longline fisheries in waters outside the Convention Area [6],

Recognising that fisheries in high-seas waters outside the Convention Area are regulated by regional fishery management organisations (RFMOs), Recalling repeated attempts to communicate these concerns to RFMOs [7],

1. Invites listed RFMOs (Appendix 1) to implement or develop, as appropriate, mechanisms to require the collection, reporting and dissemination of data on incidental mortality of seabirds, particularly:

(i) Rates of incidental mortality of seabirds associated with each fishery, details of the seabird species involved, and estimates of total seabird mortality (at least at the scale of FAO area);

(ii) Measures to minimise or avoid mortality of seabirds that are in use in each fishery and the extent to which any of these are voluntary or mandatory, together with an assessment of their effectiveness;

(iii) The nature of scientific observer programs, including observer coverage, associated with each fishery.

2. For areas where such mechanisms are currently unavailable or where systematic data reporting has not commenced, requests Flag States conducting longline fishing (or other fishing methods) outside the Convention Area, which incidentally take seabirds of species breeding in the Convention Area, to provide the CCAMLR Secretariat with summary data as specified in paragraph 1 above.

3. Urges Members that are also members of listed RFMOs to:

(i) Request that the topic of seabird incidental mortality be included on the agenda of pertinent meetings of each RFMO and, where appropriate, to send relevant experts to these meetings;

(ii) Identify those areas and circumstances within the listed RFMOs where incidental mortality of seabirds occurs;

(iii) Identify those mitigation measures which would be most effective at reducing or eliminating such mortality and to require such measures to be implemented in the relevant fisheries.

4. Encourages Flag States involved with new and developing RFMOs to request that incidental mortality of seabirds (and other by-catch taxa as appropriate) is adequately addressed and mitigated. Appropriate initiatives might include:

(i) Establishment or expansion of existing observer programs and adoption of appropriate data collection protocols on seabird incidental mortality;

(ii) Establishment of by-catch working groups that will address incidental mortality issues and make recommendations for suitable, practicable, and effective mitigation measures, including evaluation of established and innovative technologies and techniques;

(iii) Evaluations of fishery impacts on the affected seabird populations;

(iv) Cooperate (*e.g.* on data exchange) with listed RFMOs.

[1] CCAMLR–XX, paragraph 6.33; SC–CAMLR–XX, paragraph 4.73; SC–CAMLR–XXII, Annex 5, paragraph 6.273

[2] SC–CAMLR–XXIII/BG/22; SC–CAMLR–XXII, paragraph 5.26 and Annex 5, paragraphs 6.138 to 6.145

[3] SC–CAMLR–XXII, Annex 5, paragraphs 6.248 and 6.250

[4] CCAMLR–XXIII, paragraph 5.2(i); SC–CAMLR–XXIII, paragraph 5.46(i) and Annex 5, Table 6.3

[5] CCAMLR–XXIII, paragraph 5.1; SC–CAMLR–XXIII, paragraphs 5.46(viii) and 5.20(v) and Annex 5, paragraphs 7.151 and 7.152

[6] SC–CAMLR–XXII, Annex 5, paragraph 6.130; SC–CAMLR–XXIII, paragraph 5.19 and Annex 5, paragraphs 7.124 to 7.128;

[7] CCAMLR–XXI, paragraph 6.16; SC–CAMLR–XXI, paragraphs 5.30 to 5.34; CCAMLR–XXII, paragraph 5.17; SC–CAMLR–XXII, paragraph 5.28 and Annex 5, paragraphs 6.177 and 6.178; SC–CAMLR–XXIII, paragraphs 5.21(iii) and 5.48(iv) and Annex 5, paragraphs 7.165 and 7.166

Appendix 1—Regional Fisheries Management Organisations Identified for Contact With Respect To Tasks on the Mitigation of By-Catch of Southern Ocean Seabirds

Inter-American Tropical Tuna Commission (I–ATTC)

International Commission for the Conservation of Atlantic Tunas (ICCAT)

South East Atlantic Fisheries Organisation (SEAFO)

Indian Ocean Tuna Commission (IOTC)

Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

Agreement on the Organization of the Permanent Commission on the Exploitation and Conservation of the Marine Resources of the South Pacific, 1952 (CPPS)

Southwest Indian Ocean Fisheries Commission (SWIOFC)—when it is established

The Fourth Intergovernmental Consultation on the establishment of the Southwest Indian Ocean Fisheries Commission was held in Mahe, Seychelles, from 13 to 16 July 2004.

Commission for Highly Migratory Species in the Central and Western Pacific (WCPFC)

The Convention, establishing WCPFC has entered in force on 19 June 2004. The Commission does not yet exist as functioning body.

Western Indian Ocean Tuna Organization Convention (WIOTO)

The organization does not have regulatory power.

Resolution 23/XXIII

Safety on Board Vessels Fishing in the Convention Area

Species all
Area all
Season all
Gear all

The Commission, Recognising the difficult and dangerous conditions experienced in high-latitude fisheries in the Convention Area,

Further considering the remoteness of those waters and in consequence the difficulties of seach and rescue response,

Desiring to ensure that the safety of fishing crews and CCAMLR scientific observers remains a priority concern of all Members,

Urges Members to take particular measures through, *inter alia,* appropriate survival training and the provision and maintenance of appropriate equipment and clothing to promote the safety of all those on board vessels fishing in the Convention Area.

Dated: January 12, 2005.

Margaret F. Hayes,

Director, Office of Oceans Affairs, Department of State.

[FR Doc. 05–1223 Filed 1–25–05; 8:45 am]

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Federal Register

Wednesday,
January 26, 2005

Part III

Department of Energy

10 CFR Part 851

Worker Safety and Health Program; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 851

[Docket No. EH–RM–04–WSHP]

RIN 1901–AA99

Worker Safety and Health Program

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is issuing a supplemental proposal to implement the statutory mandate of section 3173 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 to establish worker safety and health regulations to govern contractor activities at DOE workplaces. The supplemental proposal reflects consultations with the Defense Nuclear Facilities Safety Board (DNFSB), as well as comments received from members of the public.

DATES: The comment period will end on April 26, 2005. Public hearings will be held on March 29 and 30, 2005 from 9 a.m. to 12 p.m. and from 1:30 p.m. to 5 p.m. Requests to speak at the hearings should be phoned in to Jacqueline D. Rogers, 202–586–4714, by March 28, 2005. Each presentation is limited to 10 minutes.

ADDRESSES: Written comments (three copies) should be addressed to: Jacqueline D. Rogers, U.S. Department of Energy, Docket Number EH–RM–03–WSH; Room GA–098, 1000 Independence Avenue, SW., Washington DC 20585–0270. Alternatively, comments can be filed electronically by e-mail to: *rule851.comments@hq.doe.gov* noting ''Worker Safety and Health Rule Comments'' in the subject line.

Copies of the public hearing transcripts, written comments received, and any other docket material may be reviewed on the Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/rulemakingwsh.*

The public hearings for this rulemaking will be held in Washington, DC at the Holiday Inn-Washington Capitol, 550 C Street, SW., Washington, DC 20024.

For more information concerning public participation in this rulemaking proceeding, see Section IV of this notice (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Room GA–089, 1000 Independence Avenue, SW., Washington DC 20585–0270, 202–586–4714, e-mail: *jackie.rogers@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

DOE has broad authority to regulate worker safety and health pursuant to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911, and the Department of Energy Organization Act (DOEOA), 42 U.S.C. 7101–7352. DOE currently exercises this authority in a comprehensive manner by incorporating appropriate provisions on worker safety and health into the contracts under which work is performed at DOE workplaces. During the past decade, DOE has taken steps to ensure that contractual provisions on worker safety and health are tailored to reflect particular workplace environments. In particular, the Integration of Environment, Health and Safety into Work Planning and Execution clause set forth in the DOE procurement regulations requires DOE contractors to establish an integrated safety management system. 48 CFR 952.223–71 and 970.5223–1. As part of this process, a contractor must define the work to be performed, analyze the potential hazards associated with the work, and identify a set of standards and controls that are sufficient to ensure safety and health if implemented properly. The identified standards and controls are incorporated as contractual requirements through the Laws, Regulations and DOE Directives clause set forth in the DOE procurement regulations. 48 CFR 970.0470–2 and 970.5204–2. Specifically, the Laws, Regulations and DOE Directives clause set forth in the DOE procurement regulations requires the incorporation of applicable DOE Orders into a contract unless a contractor develops a tailored set of standards and obtains DOE approval to incorporate this tailored set in place of the applicable DOE Orders.

In 2002, Congress directed DOE to promulgate regulations on worker safety and health to govern the conduct of contractors with Price-Anderson indemnification agreements in their contracts. Specifically, section 3173 of the National Defense Authorization Act (NDAA) amended the AEA to add section 234C (codified as 42 U.S.C. 2282c) that requires DOE to promulgate worker safety and health regulations that maintain ''the level of protection currently provided to * * * workers.'' Pub. L. 107–314 (December 2, 2002). These regulations are to include ''flexibility to tailor implementation * * * to reflect activities and hazards associated with a particular work environment; to take into account special circumstances for facilities permanently closed, demolished, or title transferred; achieve national security missions.'' Section 234C also makes a DOE contractor with such an indemnification agreement that violates these regulations subject to civil penalties similar to the authority Congress granted to DOE in 1988 with respect to civil penalties. Section 234C also directed DOE to insert in such contracts a clause providing for reducing contractor fees and other payments in the event of a violation by a contractor or contractor employee of any regulation promulgated under section 234C while specifying that both sanctions may not be used for the same violation.

On December 8, 2003, DOE published a notice of proposed rulemaking to implement section 3173 of the NDAA (68 FR 68276). The December proposal was intended to codify existing DOE practices in order to ensure the worker health and safety regulations would provide DOE workers a level of protection equivalent to that currently afforded them. Specifically, under the December proposal, a contractor would comply with either a set of requirements based primarily on the provisions of DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees, the current DOE Order on worker health and safety, or a tailored set of requirements approved by DOE. The contractor would implement these requirements pursuant to a worker health and safety program approved by DOE.

On January 1, 2004, DOE held a video conference to allow DOE employees, DOE contractors, contractor employees, and employee representatives to become

familiar with the December proposal. DOE held public hearings on the December proposal in Washington, DC on January 21, 2004, and in Golden, Colorado on February 4, 2004. In addition to the oral comments at the public hearings, DOE received approximately 50 written comments on the December proposal.

On February 27, 2004, after becoming aware that the DNFSB had concerns with regard to the December proposal, DOE suspended the rulemaking in order to consult with the DNFSB and to consider comments received from other stakeholders on the December proposal. (69 FR 9277) As a result of its consultation with the DNFSB and consideration of other comments, DOE is now restarting the rulemaking proceeding through the issuance of this notice that sets forth a supplemental proposal, announces additional public hearings and provides the opportunity for further written comments.

II. Supplemental Proposal

The supplemental proposal contains several provisions that differ from those in the December proposal. These proposed provisions incorporate approaches put forth by the DNFSB during consultations, as well as by the comments on the December proposal. Specifically, the supplemental proposal contains provisions that would: (1) Codify a minimum set of safety and health requirements with which contractors must comply; (2) establish a formal exemption process which requires approval by the Secretarial Officer with line management responsibility and provides for significant involvement by the Assistant Secretary for Environment, Safety and Health; (3) delineate the role of the worker safety and health program and its relationship to integrated safety management; (4) set forth the general duties of contractors responsible for DOE workplaces; and (5) limit the scope of the regulations to contractor activities at DOE sites.

Subpart C of the supplemental proposal sets forth the proposed worker safety and health requirements with which a contractor would comply. These proposed requirements correspond, to a large extent, with the provisions set forth in Appendix A to the December proposal. These requirements include a variety of OSHA and consensus standards, and these standards would be legally binding on a contractor to the extent that a requirement is applicable to the hazards identified for a particular workplace environment. DOE invites comments on the question of whether the OSHA and consensus standards included in today's supplemental proposal provide an appropriate basis for enforcing worker safety and health requirements at DOE facilities.

DOE does not expect that codification of these requirements will result in significant increased costs since, to a very large extent, they are based on existing provisions of DOE Order 440.1A, DOE Order 420 and DOE Notice 450.7 that have been incorporated into most existing DOE contracts through the Integration of Environment, Health and Safety into Work Planning and Execution clause and the Laws, Regulations and DOE Directives clause. Accordingly, most contractors already should be implementing the substance of the proposed requirements to the extent applicable to the hazards identified for a particular workplace environment. In addition, DOE expects that the implementation guidance for the proposed requirements would be essentially the same as the implementation guidance for the corresponding provisions in DOE Order 440.1A, DOE Order 420 and DOE Notice 450.7 and that contractors would make use of analyses, evaluations and work planning already undertaken to meet their existing contractual worker health and safety obligations. DOE requests comments from any person who believes that codification will result in significant increased costs. These comments should identify the reasons for the increased costs and potential changes to the supplemental proposal that could reduce or eliminate increased costs.

Subpart D of the supplemental proposal sets forth a proposed exemption process by which the Secretarial Officer with line management responsibility for a contractor can relieve the contractor from complying with a particular requirement with respect to a particular workplace. The Assistant Secretary for Environment, Health and Safety would have the opportunity to review and comment on an exemption prior to its issuance and, in the case of a non-NNSA contractor, would have the option to non-concur in the issuance of an exemption. Subpart D is based on the existing exemption process for nuclear safety requirements that is set forth in 10 CFR part 820. Subpart D contains specific provisions that would require any exemption to: Adequately protect the safety and health of workers; be consistent with a safe and healthful workplace free from recognized workplace hazards that are causing or are likely to cause death or serious bodily injury; not permit exposure limits that are less protective than the limits required by subpart C; not diminish the level of protection afforded workers; and involve a special circumstance. The proposed list of special circumstances includes three situations not included in the exemption process set forth in Part 820. The additional situations would be situations where: an exemption would contribute to tailoring the requirements of this part to reflect the hazards and facilities associated with a particular work environment; a facility is to be, permanently closed and demolished, or title is expected to be transferred to another entity for reuse; or an exemption would contribute substantially to achieving a national security mission of the Department of Energy in an efficient and timely manner. The proposed addition of these three special circumstances is intended to ensure the supplemental proposal would have the regulatory flexibility mandated by the NDAA.

DOE requests comments as to whether the exemption process is the most appropriate or effective method to: Ensure sufficient regulatory flexibility to address the myriad of workplace environments across the DOE complex; maintain a level of protection equivalent to that currently afforded workers; take advantage of worker safety and health programs already implemented to meet existing contractual obligations; and minimize unnecessary costs. Comments should identify potential modifications or alternative approaches.

Subpart B of the supplemental proposal sets forth the proposed requirements for a contractor to develop, implement, and maintain a worker safety and health program and for DOE to approve the program. Subpart B would make clear that the overarching objectives for a program must be: Provision of a place of employment that is free from recognized workplace hazards that are causing or are likely to cause death or serious bodily harm to workers; and adequately protecting workers from identified hazards. These objectives are intended to ensure that the statutory standards in the AEA and the Occupational Safety and Health Act are met.

Subpart B is based on the existing process for establishing worker safety and health programs pursuant to the Integration of Environment, Health and Safety into Work Planning and Execution clause and DOE Order 440. Specifically, a contractor responsible for a covered workplace would identify existing and potential workplace hazards and assess the risk of associated workers' injuries and illnesses. To do

this, the contractor would (1) define the scope of work; (2) identify relevant features of the work environment; (3) perform activity level hazard analyses to identify hazards; and (4) assess the risk of injury and illness associated with those hazards. After identifying hazards and assessing risks, the contractor would identify appropriate hazard controls to protect workers from the identified hazards prior to initiating work activities. Selection of hazard controls would take into account all hazards to ensure the development of an integrated set of hazard controls. The contractor would prioritize and implement abatement actions for identified hazards according to risk, implement interim protective measures pending final abatement, and protect workers from imminent danger.

Subpart B provides that a DOE contractor responsible for one or more covered workplaces at a DOE site would submit to DOE, for its approval, a written worker safety and health program describing site-specific methods and provisions for complying with the program requirements. At sites with multiple contractors responsible for various workplaces at the site, the contractors would coordinate with each other to ensure that the worker safety and health programs at the site are integrated and consistent. Beginning one year after the publication of the final rule, no work could proceed at a covered DOE workplace without a safety and health program in place that had been approved by the CSO or the DOE site manager if approval authority were delegated by the CSO. To ensure consistency throughout program offices and across DOE, however, the CSO or site manager would consult with the Assistant Secretary for Environment, Safety and Health in the evaluation and approval of contractor programs. To ensure timely evaluation and processing of each contractor-submitted program and to avoid work stoppage due to unnecessary delays, the CSO or the Site Manager would be obligated to act on a contractor-submitted program within 90 days of receipt of the program. DOE requests comments as to how the efficiency of the approval process might be increased and, in particular, as to the need for separate DOE approval of sub-elements of a worker safety and health program.

A contractor would maintain the worker safety and health program for a workplace by evaluating and updating the worker safety and health program to reflect changes in the work and associated hazards. The process for defining the scope of work, analyzing the hazards associated with the work, and identifying the applicable standards should be an iterative process performed continually to monitor changes in workplace activities and processes and to provide feedback on program performance. Through this process, a contractor would evaluate significant changes or additions to workplace activities to identify new hazards and to assess whether the existing program effectively addressed the scope and nature of the work and related hazards. This iterative process would provide the contractor with the information necessary to make changes and improvements to all aspects of the program as needed. On an annual basis, the contractor would either submit its updated worker safety and health program to DOE for approval or, if no changes are made to the program over the past year, a letter to that effect.

Most contractors already have worker safety and health programs in effect. DOE expects contractors to build on these existing programs and not to duplicate work already undertaken to meet existing contractual obligations. For example, under paragraph 9 of the DOE Order 440.1A, Contractor Requirements document, DOE contractors have for almost a decade been required to: ''Identify existing and potential workplace hazards and evaluate risk of associated worker injury and illness; analyze or review: (1) Designs for new facilities and modifications to existing facilities and equipment; (2) operations and procedures; and (3) equipment, product, and services; assess worker exposure to chemical, physical, biological, or ergonomic hazards through appropriate workplace monitoring (including personal, area, wipe, and bulk sampling); biological monitoring; and observation; evaluate workplaces and activities (accomplished routinely by workers, supervisors, and managers and periodically by qualified worker protection professionals); and report and investigate accidents, injuries, and illnesses and analyze related data for trends and lessons learned.'' Similarly, under the Integration of Environment, Health and Safety into Work Planning and Execution clause, contractors are required to: Identify and evaluate workplace hazards, select an agreed-upon set of safety and health standards to address those specific hazards, and implement administrative and engineering controls to prevent or mitigate specific workplace hazards.

Section 851.4 of the supplemental proposal sets forth the proposed general duties of a contractor responsible for a covered workplace. Specifically, the contractor would be responsible for: Ensuring the workplace is free from recognized workplace hazards that are causing or are likely to cause death or serious bodily harm; providing workers adequate protection from the hazards identified for the workplace; complying with the workplace safety and health requirements set forth in subpart C of the supplemental proposal that are applicable to the hazards identified for the workplace; complying with any compliance order issued by the Secretary that is applicable to the workplace; ensuring work is performed in accordance with the worker health and safety program for the covered workplace; and reporting to DOE and investigate each occurrence, including any near miss incident, that causes or gives raise to a significant likelihood of death or serious bodily harm to a worker.

Section 851.1 of the supplemental proposal would limit its scope to contractor activities at DOE sites. Federal employees would continue to be covered by existing programs for federal employees. Section 851.1 also would exclude contractor employees at DOE sites currently regulated by OSHA. DOE believes this exclusion is appropriate since there are no defense nuclear facilities located at these sites and the contractors responsible for workplaces at these sites do not have Price-Anderson indemnification agreements in their contracts.

III. Procedural Review Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, DOE submitted this notice of proposed rulemaking to the Office of Information and Regulatory Affairs of the Office of Management and Budget, which has completed its review.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b)

requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions.

Today's regulatory action has been determined not to be a ''policy that has federalism implications,'' that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no ''federalism summary impact statement'' was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has tribal implications and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

E. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

Today's proposed regulation would establish DOE's requirements for worker safety and health at DOE sites. The contractors who manage and operate DOE facilities would be principally responsible for implementing the rule requirements. DOE considered whether these contractors are ''small businesses,'' as that term is defined in the Regulatory Flexibility Act's (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of small business concerns in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. The DOE contractors subject to the proposed rule exceed the SBA's size standards for small businesses. In addition, DOE expects that any potential economic impact of this proposed rule on small businesses would be minimal because DOE sites perform work under contracts to DOE or the prime contractor at the site. DOE contractors are reimbursed through their contracts with DOE for the costs of complying with DOE safety and health program requirements. They would not, therefore, be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that today's proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. *See* 68 FR 7990 at III.1. and III.1.c. (February 19, 2003).

F. Review Under the Paperwork Reduction Act

The information collection provisions of this proposed rule are not substantially different from those contained in DOE contracts with DOE prime contractors covered by this rule and were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–5103. That approval covered submission of a description of an integrated safety management system required by the Integration of Environment, Health and Safety into Work Planning and Execution clause set forth in the DOE procurement regulations. 48 CFR 952.223–71 and 970.5223–1, 62 FR 34842, 34859–60 (June 17, 1997). If contractors at a DOE site fulfill their contractual responsibilities for integrated safety management properly, the worker safety and health program required by the proposed regulations should require little if any new analysis or new documents to the extent that existing analysis and documents are sufficient for purposes of the proposed regulations. Accordingly, no additional Office of Management and Budget clearance is required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

G. Review Under the National Environmental Policy Act

DOE currently implements its broad authority to regulate worker safety and health through internal DOE directives incorporated into contracts to manage and operate DOE facilities, contract clauses and DOE regulations. This proposed rule would implement the statutory mandate to promulgate worker safety and health regulations for DOE facilities that would provide a level of protection for workers at DOE facilities that is substantially equivalent to the level of protection currently provided to such workers and to provide procedures to ensure compliance with the rule. DOE anticipates that the contractor's work and safety programs required by this regulation would be based on existing programs and that this rule would generally not require the development of a new program. DOE has therefore concluded that promulgation of these regulations would fall into the class of actions that would not individually or cumulatively have a significant impact on the human environment as set forth in the DOE regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule would be covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in

any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published today does not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the proposed rule published today would not have a significant adverse effect on the supply, distribution, or use of energy and thus the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice of proposed rulemaking under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

IV. Public Comment Procedures

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. To help DOE review the submitted comments, commenters are requested to reference the provision to which they refer where possible.

All information provided by commenters will be available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays. The docket file material for this rulemaking will be under EH–RM–04–WSHP.

DOE also intends to enter all written comments on a Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/rulemakingwsh.*

To assist DOE in making public comments available on a website, interested persons are to submit an electronic version of their written comments in accordance with the instructions in the **DATES** section of this notice of proposed rulemaking.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the Freedom of Information Act section on ''Handling Information of a Private Business, Foreign Government, or an International Organization,'' 10 CFR 1004.11.

B. Public Hearings

Public hearings will be held at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this notice of proposed rulemaking. Any person who is interested in making an oral presentation should, by 4:30 p.m. on the date specified, make a phone request to the number in the **DATES** section of this notice of proposed rulemaking. The person should provide a daytime phone number where he or she may be reached. Persons requesting an opportunity to speak will be notified as to the approximate time they will be speaking. Each presentation is limited to 10 minutes. Persons making oral presentations should bring three copies of their statement to the hearing and submit them at the registration desk.

DOE reserves the right to select the persons who will speak. In the event that requests exceed the time allowed, DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the hearing. A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those persons conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official.

A transcript of each hearing will be made available to the public. DOE will retain the record of the full hearing, including the transcript, and make it available on the Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/rulemakingwsh.* If DOE must cancel the hearing, it will make every effort to give advance notice.

List of Subjects in 10 CFR Part 851

Civil penalty, Hazardous substances, Incorporation by reference, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

Issued in Washington, DC on January 14, 2005.

John Spitaleri Shaw,

Assistant Secretary for Environment, Safety and Health.

For the reasons set forth in the preamble, title 10, chapter III of the Code of Federal Regulations is proposed to be amended by adding part 851 to read as set forth below.

PART 851—WORKER SAFETY AND HEALTH PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Worker Safety and Health Program

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart A—General Provisions

§ 851.1 Scope and exclusions.

(a) The worker safety and health requirements in this part govern the conduct of contractor activities at DOE sites, with the exception of sites listed in paragraph (b) of this section.

(b) This part does not apply to a DOE site:

(1) Regulated by the Occupational Safety and Health Administration (OSHA) on [date on which final rule is issued]; or

(2) Operated under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 98–525, 42 U.S.C. 7158 note.

(c) This part does not apply to radiological hazards to the extent regulated by 10 CFR parts 820, 830 or 835.

§ 851.2 Purpose.

This part establishes the:

(a) Safety and health requirements that a contractor responsible for a covered workplace must implement through a worker safety and health program that provides its workers with a safe and healthful workplace in which workplace hazards are abated, controlled or otherwise mitigated in a manner that provides reasonable assurance that workers are adequately protected from identified hazards; and

(b) Procedures for investigating whether a violation of a requirement has occurred, for determining the nature and extent of any such violation, and for imposing an appropriate remedy.

§ 851.3 Definitions.

Activity-level hazard analysis means an analysis of work-related hazards relating to a specific job activity, task, operation or process.

AEA means the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*

Cognizant Secretarial Officer means the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor.

Compliance Order means an Order issued by the Secretary to a contractor that mandates a remedy, work stoppage, or other action to address a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part.

Consent order means any written document, signed by the Director and a contractor, containing stipulations or conclusions of fact or law and a remedy acceptable to both DOE and the contractor.

Contractor means any entity under contract with DOE, or a subcontractor to such an entity, and includes any affiliated entity such as a parent organization.

Director means a DOE Official to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of this part.

DOE means the United States Department of Energy, including the National Nuclear Security Administration.

DOE site means a DOE-owned or leased area or location where activities and operations are performed at one or more facilities or locations by a contractor.

Final notice of violation means a document that determines a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for the determination;

(3) Any remedy, including the amount of any civil penalty; and

(4) A statement explaining the reasoning behind any remedy.

Final Order means an order of DOE that represents final agency action and, if appropriate, imposes a remedy with which the recipient of the order must comply.

General Counsel means the General Counsel of DOE.

Hazard control means a procedure, practice, means, method, operation, work process, or other control used to prevent, abate or mitigate workplace hazards and associated risks.

Interpretation means a statement by the General Counsel concerning the meaning or effect of a requirement of this part which relates to a specific factual situation but may also be a ruling of general applicability if the General Counsel determines such action to be appropriate.

NNSA means the National Nuclear Security Administration.

Preliminary notice of violation means a document that sets forth the preliminary conclusions that a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for alleging the violation;

(3) Any remedy, including the amount of any proposed civil penalty; and

(4) A statement explaining the reasoning behind any proposed remedy.

Remedy means any action (including but not limited to, the assessment of civil penalties, the reduction of fees or other payments under a contract, the requirement of specific actions, or the modification, suspension or recission of a contract) necessary or appropriate to rectify, prevent, or penalize a violation of a requirement of this part, including a compliance order issued by the Secretary pursuant to this part.

Secretary means the Secretary of Energy.

Site Manager means the DOE official who has primary responsibility for overall management of a DOE site.

Worker means a person who performs work for or on behalf of DOE, including an independent contractor, a DOE contractor or subcontractor employee, or any other person who performs work at a covered workplace.

Workplace hazard means a physical, chemical, biological, or radiological hazard with any potential to cause illness, injury, or death to a person.

Workplace safety and health programmatic requirements means a set of requirements that addresses related workplace hazards in a comprehensive manner, including requirements on construction safety, fire protection, firearms safety, explosives safety, industrial hygiene, occupational

medicine, pressure safety motor vehicle safety, and biosurety.

Workplace safety and health requirement means a workplace safety and health standard or programmatic requirement.

Workplace safety and health standard means a standard which addresses a workplace hazard by establishing limits, requiring conditions, or prescribing the adoption or use of one or more practices, means, methods, operations, or processes.

§ 851.4 General rule.

The contractor responsible for a covered workplace must:

(a) Ensure the workplace is free from recognized workplace hazards that are causing or are likely to cause death or serious bodily harm;

(b) Provide workers adequate protection from the hazards identified for the workplace;

(c) Comply with the workplace safety and health requirements set forth in subpart C of this part that are applicable to the hazards identified for the workplace;

(d) Comply with any compliance order issued by the Secretary pursuant to § 851.5 that is applicable to the workplace;

(e) Ensure work is performed in accordance with the worker health and safety program for the covered workplace; and

(f) Report to DOE and investigate each occurrence, including any near miss incident that causes or gives raise to a significant likelihood of death or serious bodily harm to a worker.

§ 851.5 Compliance Order.

(a) The Secretary may issue to any contractor a Compliance Order that:

(1) Identifies a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part;

(2) Mandates a remedy, work stoppage, or other action; and,

(3) States the reasons for the remedy, work stoppage, or other action.

(b) A Compliance Order is a final order that is effective immediately unless the Order specifies a different effective date.

(c) Within 15 calendar days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request does not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

§ 851.6 Interpretations.

(a) The Office of the General Counsel is responsible for formulating and issuing any interpretation concerning a requirement in this part.

(b) Any written or oral response to any written or oral question which is not provided pursuant to paragraph (a) of this section does not constitute an interpretation and does not provide any basis for action inconsistent with a requirement of this part.

§ 851.7 Information and records.

(a) A contractor must maintain complete and accurate records as necessary to substantiate compliance with the requirements of this part, including but not limited to records on inventory information, hazard assessment, exposure measurements, exposure controls, and worker injuries and illnesses.

(b) A contractor may neither conceal nor destroy any information concerning non-compliance or potential non-compliance with the requirements of this part.

(c) Any information pertaining to a requirement in this part provided to DOE by any contractor or maintained by any contractor for inspection by DOE shall be complete and accurate in all material respects.

(d) Nothing in this part shall relieve any contractor from safeguarding classified, confidential, and controlled information, including Restricted Data or national security information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

§ 851.8 Compliance date.

Contractors must achieve compliance with the requirements of this part no later than [Insert date 1 year from effective date of the rule], unless an exemption granted pursuant to subpart D of this part provides otherwise.

§ 851.9 Enforcement.

(a) A contractor that has entered into an agreement of indemnification under section 170d. of the AEA(or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part is subject to a civil penalty of up to $70,000 for each such violation. If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.

(b) A contractor that violates any requirement of this part is subject to a reduction in fees or other payments under a contract with DOE, pursuant to the contract's Conditional Payment of Fee clause.

(c) DOE may not penalize a contractor under both paragraphs (a) and (b) of this section for the same violation of a requirement of this part.

(d) For contractors listed in subsection d. of section 234A of the AEA, 42 U.S.C. 2282a(d), the total amount of civil penalties under paragraph (a) and contract penalties under paragraph (b) of this section may not exceed the total amount of fees paid by DOE to the contractor in that fiscal year.

(e) DOE may not penalize a contractor under both sections 234A and 234C of the AEA for the same violation.

§ 851.10 Workers rights.

(a) Workers at a covered workplace have the right, without reprisal, to participate in activities described in this section on official time;

(b) Workers at a covered workplace also have the right, without reprisal to:

(1) Have access to:

(i) DOE safety and health publications;

(ii) The worker safety and health program for the covered workplace;

(iii) The standards, controls, and procedures applicable to the covered workplace;

(iv) The safety and health poster that informs the worker of relevant rights and responsibilities.

(2) Be notified when monitoring results indicate the worker was overexposed to hazardous materials;

(3) Observe monitoring or measuring of hazardous agents and have the results of his or her own exposure monitoring;

(4) Accompany DOE personnel during an inspection of the workplace;

(5) Request and receive results of inspections and accident investigations;

(6) Express concerns related to worker safety and health;

(7) Decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures; and

(8) Stop work when the worker discovers employee exposures to imminently dangerous conditions or other serious hazards; provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with established procedures.

Subpart B—Worker Safety and Health Program

§ 851.100 Worker safety and health program.

(a) A contractor responsible for one or more workplaces at a DOE site must establish and maintain a worker safety and health program that ensures:

(1) Workplaces are free from recognized workplace hazards that are causing or are likely to cause death or serious bodily harm; and

(2) Workers are adequately protected from identified hazards.

(b) A worker safety and health program must:

(1) Include provisions for:

(i) Defining the scope of the work to be performed prior to its initiation;

(ii) Identifying relevant features of the work environment, including designs and features of facilities, equipment, operations and procedures important to a safe and healthful workplace prior to the initiation of work activities;

(iii) Identifying and evaluating general workplace hazards, specific job hazards, and potential hazards that may arise from unforeseeable conditions;

(iv) Undertaking routine activity-level hazard analyses to:

(A) Evaluate designs of new facilities and modifications to existing facilities and equipment for potential workplace hazards; and

(B) Evaluate operations and procedures to identify workplace hazards;

(v) Considering all hazards, including radiological hazards, in order to ensure development of an integrated set of hazard controls to protect workers;

(vi) Assessing the risk of associated injury and illness to workers from the identified hazards;

(vii) Assessing worker exposure to chemical, physical, biological, radiological, or safety workplace hazards through appropriate workplace monitoring;

(viii) Documenting assessments for chemical, physical, biological, and safety workplace hazards using recognized exposure assessment and testing methodologies and use of accredited and certified laboratories;

(ix) Recording observations, testing and monitoring results; and

(x) Reviewing safety and health information.

(2) Provide for the prevention, abatement and mitigation of identified workplace hazards through:

(i) Prioritization and implementation of actions according to the potential hazard to workers;

(ii) Implementation of interim protective measures pending final action;

(iii) Protection of workers from imminently dangerous conditions;

(iv) Selection of hazard controls based on the following hierarchy:

(A) Elimination of the hazard;

(B) Engineered controls;

(C) Work practices and administrative controls; and

(D) Personal protective equipment; and

(v) Emphasis on reducing hazards to workers when purchasing equipment and services.

(3) Provide for the effective implementation of the worker safety and health requirements of subpart C of this part in a manner tailored to:

(i) Reflect activities and hazards associated with a particular work environment;

(ii) Take into account special circumstances at a covered workplace that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse on behalf of an entity other than DOE; and

(iii) Achieve national security missions of the Department of Energy in an efficient and timely manner.

(4) Identify the hazard controls to be used to provide adequate protection from identified hazards at the activity level in a tailored manner for a particular work environment or the process for selecting and identifying such controls in the future prior to the initiation of work activities;

(5) Identify situations for which the contractor has concluded an exemption pursuant to subpart D is needed and the process for identifying other such situations in the future;

(6) Provide for feedback on the worker safety and health program and for its continuous improvement;

(7) Ensure that all workers are provided with information and training needed to perform their duties in a safe and healthful manner;

(8) Ensure the worker safety and health program is consistent and integrated with other safety activities at the workplace;

(9) Contain provisions to ensure compliance by subcontractors; and

(10) Document the process of developing and maintaining the worker safety and health program at a level commensurate with the complexity and hazards associated with the workplace.

§ 851.101 Approval and maintenance of the worker safety and health program.

(a) By July 25, 2005, contractors must submit for DOE approval a written worker safety and health program that meets the requirements of § 851.100.

(1) If a contractor is responsible for more than one covered workplace at a DOE site, the contractor must establish and maintain a single worker safety and health program for the workplaces at the site for which the contractor is responsible.

(2) If more than one contractor is responsible for covered workplaces at a DOE site, each contractor must:

(i) Establish and maintain a worker safety and health program for the workplaces for which the contractor is responsible; and

(ii) Coordinate with the other contractors responsible for covered workplaces at the site to ensure that the worker safety and health programs at the site are integrated and consistent.

(b) The Cognizant Secretarial Officer or, if approval authority is delegated by the Cognizant Secretarial Officer, the Site Manager must review and approve the contractor's worker safety and health program, in consultation with the Assistant Secretary for Environment, Safety and Health, within 90 days after receipt from the contractor. Beginning January 26, 2006, no work may be performed at a covered workplace unless the Cognizant Secretarial Officer or the Site Manager has approved the worker safety and health program for the workplace.

(c) A contractor must maintain its worker safety and health program by:

(1) Evaluating and updating the worker safety and health program at least annually to reflect when significant changes or additions in the activities and hazards are made, or a change in contractors occurs;

(2) Annually submitting to the Cognizant Secretarial Officer or, if approval authority is delegated by the Cognizant Secretarial Officer, the DOE Site Manager either an updated worker safety and health program for approval or a letter stating that no changes are necessary in the currently approved worker safety and health program;

(3) Performing an internal audit of its worker safety and health program no less frequently than every 36 months and transmitting the results of the audit to the DOE Site Manager, the Cognizant Secretarial Officer, the Assistant Secretary for Environment, Safety and Health, and the Director; and

(4) Incorporating in the worker safety and health program any changes, conditions, or workplace safety and health standards directed by DOE.

Subpart C—Safety and Health Requirements

§ 851.200 Worker safety and health requirements.

(a) A contractor responsible for a covered workplace must comply with the worker safety and health requirements set forth in this subpart as applicable to the workplace hazards identified for facilities and activities under its control.

(b) Nothing in this subpart shall be construed to limit the authority of DOE to impose additional requirements on a contractor.

§ 851.201 Worker safety and health standards.

(a) The following regulations of the Occupational Safety and Health Administration (OSHA) in effect as of [Insert Effective Date of Final Rule]:

(1) 29 CFR part 1910, Occupational Safety and Health Standards, except 29 CFR part 1910.109;

(2) 29 CFR part 1915, Occupational Safety and Health Standards for Shipyard Employment;

(3) 29 CFR part 1917, Marine Terminals;

(4) 29 CFR part 1918, Safety and Health Regulations for Longshoring;

(5) 29 CFR part 1926, Safety and Health Regulations for Construction; and

(6) 29 CFR part 1928, Occupational Safety and Health Standards for Agriculture.

(b) The National Fire Protection Association (NFPA) codes and standards listed in Table 1 below.

TABLE 1.—NATIONAL FIRE PROTECTION ASSOCIATION CODES AND STANDARDS

NFPA No.	Title	Edition
1	Uniform Fire Code	2003
10	Standard for Portable Fire Extinguishers	2002
11A	Standard for Medium- and High-Expansion Foam Systems	1999
11	Standard for Low-, Medium-, and High-Expansion Foam	2002
12	Standard on Carbon Dioxide Extinguishing Systems	2000
12A	Standard on Halon 1301 Fire Extinguishing Systems	1997
13	Standard for the Installation of Sprinkler Systems	2002
14	Standard for the Installation of Standpipe and Hose Systems	2003
15	Standard for Water Spray Fixed Systems for Fire Protection	2001
16	Standard for the Installation of Foam-Water Sprinkler Foam-Water Spray Systems	2003
17A	Standard for Wet Chemical Extinguishing Systems	2002
17	Standard for Dry Chemical Extinguishing Systems	2002
20	Standard for the Installation of Stationary Pumps for Fire Protection	2003
22	Standard for Water Tanks for Private Fire Protection	2003
24	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	2002
25	Standard for Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems	2002
30A	Codes for Motor Fuel Dispensing Facilities and Repair Garages	2003
30	Flammable and Combustible Liquids Code	2003
31	Standard for the Installation of Oil-Burning Equipment	2001
33	Standard for Spray Application Using Flammable or Combustible Materials	2003
37	Standard for the Installation and Use of Stationary Combustion Engines and Gas	2002
45	Standard on Fire Protection for Laboratories Using Chemicals	2000
50A	Standard for Gaseous Hydrogen Systems at Consumer sites	1999
50B	Standard for Liquefied Hydrogen Systems at Consumer Sites	1999
50	Standard for Bulk Oxygen Systems at Consumer Sites	2001
51	Standard for the Design and Installation of Oxygen Fuel Gas Systems for Welding, Cutting, and Allied Processes.	2002
51B	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work	2003
52	Compressed Natural Gas (CNG) Vehicular Fuel Systems Code	2002
54	ANSI Z223.1, 2002 National Fuel Gas Code	2002
55	Standard for Storage, Use and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders and Tanks.	2003
57	Liquefied Natural Gas (LNG) Vehicular Fuel Systems Codes	2002
58	Liquefied Petroleum Gas Code	2001
59A	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)	2001
59	Utility LP-Gas Plant Code	2001
69	Standard on Explosion Prevention Systems	2002
70	National Electrical Code	2002
70E	Standard for Electrical Safety Requirements for Employee Workplaces	2002
72	National Fire Alarm Code	2002
73	Electrical Inspection Code for Existing Dwellings	2000
75	Standard for the Protection of Information Technology Equipment	2003
80	Standard for Fire Doors and Fire Windows	1999
82	Standard on incinerators and Waste and Linen Handling Systems and Equipment	1999
85	Boiler and Combustion Systems Hazards Code	2001
86	Standard for Ovens and Furnaces	2003
88A	Standard for Parking Structures	2002
90A	Standard for the Installation of Air-Conditioning and Ventilating Systems	2002
90B	Standard for the Installation of Warm Air Heating and Air-Conditioning Systems	2002
91	Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids.	1999
96	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations	2001
97	Standard glossary of terms Relating to Chimneys, Vents, and Heat-Producing Appliances	2003
99	Standard for Health Care Facilities	2002
99C	Standard on Gas and Vacuum Systems	2002

TABLE 1.—NATIONAL FIRE PROTECTION ASSOCIATION CODES AND STANDARDS—Continued

NFPA No.	Title	Edition
101B	Code for Means of Egress for Buildings and Structures	2002
101	Life Safety Code	2003
102	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures	1995
105	Standard for the Installation of Smoke Door Assemblies	2003
110	Standard for Emergency and Standby Power Systems	2002
111	Standard on Stored Electrical Energy Emergency and Standby Power Plants	2001
115	Standard for Laser Fire Protection	2003
204	Standard for Smoke and Heat Venting	2002
211	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	2003
214	Standard on Water-Cooling Towers	2000
220	Standard on Types of Building Construction	1999
221	Standard for Fire Walls and Fire Barrier Walls	2000
230	Standard for the Fire Protection of Storage	2003
232	Standard for the Protection of records	2000
241	Standard for Safeguarding Construction, Alteration, and Demolition Operations	2000
307	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves	2000
318	Standard for the Protection of Semiconductors Fabrication Facilities	2002
326	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair	1999
385	Standard for Tank Vehicles for Flammable and Combustible Liquids	2000
407	Standard for Aircraft Fuel Servicing	2001
408	Standard for Aircraft Hand Portable Fire Extinguishers	1999
409	Standard on Aircraft Hangers	2001
415	Standard on Airport terminal Building, Fueling Ramp Drainage, and Loading Walkways	2002
418	Standard for Heliports	2001
430	Code for the Storage of Liquid and Solid Oxidizers	2000
432	Code for the Storage of Organic Peroxide Formulations	2002
434	Code for the Storage of Pesticides	2002
472	Standard for Professional Competence of Responders to Hazardous Materials Incidents	2002
473	Standard for Competencies for EMS Personnel Responding to Hazardous Materials Incidents	2002
484	Standard for Combustible Metals, Metal Powders, and Metal Dusts	2002
490	Code for the Storage of Ammonium Nitrate	2002
495	Explosive Materials Code	2001
496	Standard for Purged and Pressurized Enclosures for Electrical Equipment	2003
498	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	2001
502	Standard for Road Tunnels, Bridges, and Other Limited Access Highways	2001
505	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operations.	2002
520	Standard on Subterranean Spaces	1999
560	Standard for the Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation	2002
600	Standard on Industrial Fire Brigades	2000
601	Standard for Security Services in Fire Loss Prevention	2000
654	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids.	2000
655	Standard for Prevention of Sulfur Fires and Explosions	2001
664	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities	2002
704	Standard System for the Identification of the Hazards of Materials for Emergency Response	2001
750	Standard on Water Mist Fire Protection Systems	2003
780	Standard for the Installation of Lighting Protection Systems	2000
801	Standard for Fire Protection for Facilities Handling Radioactive Materials	2003
820	Standard for Fire Protection in Wastewater Treatment and Collective Facilities	2003
853	Standard for the Installation of Stationary Fuel Cell Power System	2003
909	Code for the Protection of Cultural Resources	2001
914	Code for Fire Protection of Historic Structures	2001
1000	Standard for Fire Service Professional Qualifications Accreditation and Certification Systems	2000
1001	Standard for Fire Fighter Professional Qualifications	2002
1002	Standard on Fire Apparatus Drivers/Operator Professional Qualifications	2003
1003	Standard for Airport Fire Fighter Professional Qualifications	2000
1006	Standard for Rescue Technician Professional Qualifications	2003
1021	Standard for Fire Officer Professional Qualifications	2003
1041	Standard for Fire Service Instructor Professional Qualifications	2002
1051	Standard for Wildland Fire Fighter Professional Qualifications	2002
1061	Standard for Professional Qualifications for Public Safety Telecommunicator	2002
1071	Standard for Emergency Vehicle Technician Professional Qualifications	2000
1141	Standard for Fire Protection in Planned Building Groups	2003
1142	Standard on Water Supplies for Suburban and Rural Fire Fighting	2001
1143	Standard for Wildland Fire Management	2003
1144	Standard for Protection of Life and Property from Wildfire	2002
1221	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems	2002
1403	Standard on Live Fire Training Evolutions	2002
1404	Standard for Fire Service Respiratory Protection Training	2002
1410	Standard on Training for Initial Emergency Scene Operations	2000
1451	Standard for a Fire Service Vehicle Operations Training Program	2002

TABLE 1.—NATIONAL FIRE PROTECTION ASSOCIATION CODES AND STANDARDS—Continued

NFPA No.	Title	Edition
1500	Standard on Fire Department Occupational Safety and Health Program	2002
1521	Standard for Fire Department Safety Officer	2002
1561	Standard on Emergency Services Incident Management System	2002
1581	Standard on Fire Department Infection Control Program	2000
1582	Standard on Comprehensive Occupational Medical Program for Fire Departments	2003
1583	Standard on Health-Related Fitness Programs for Fire Fighters	2000
1670	Standard on Operations and Training for Technical Rescue Incidents	1999
1710	Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.	2001
1851	Standard on Selection, Care and Maintenance of Structural Fire Fighting Protective Ensembles	2001
1852	Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA).	2002
1901	Standard for Automotive Fire Apparatus	2003
1906	Standard for Wildland Fire Apparatus	2001
1911	Standard for Service Test of Fire pump Systems on Fire Apparatus	2002
1912	Standard for Fire Apparatus Refurbishing	2001
1914	Standard for Testing Fire Department Aerial Devices	2002
1915	Standard for Fire Apparatus Preventive Maintenance Program	2000
1925	Standard on Marine Fire-Fighting Vessels	1998
1931	Standard on design of and Design Verification Tests for the Fire Department Ground Ladders	1999
1932	Standard on Use, Maintenance, and Service Testing of Fire Department Ground Ladders	1999
1936	Standard on Powered Rescue Tool Systems	1999
1951	Standard on Protective Ensemble for USAR Operations	2001
1961	Standard on Fire Hose	2002
1962	Standard for the Inspection, Care, and Use of Fire Hose, Couplings, and Nozzles	2003
1963	Standard for Fire Hose Connections	2003
1964	Standard for Spray Nozzles	2003
1965	Standard for Hose Appliances	2003
1971	Standard on Protective Ensembles for Structural Fire Fighting	2000
1975	Standard on Station/Work Uniforms for Fire and Emergency Services	1999
1976	Standard on Protective Ensemble for Proximity Fire Fighting	2000
1977	Standard on Protective Clothing and Equipment for Wildland Fire Fighting	1998
1981	Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services	2002
1982	Standard on Personal Alert Safety Systems (PASS)	1998
1983	Standard on Fire Service Life Safety Rope and System Components	2001
1989	Standard on Breathing Air Quality for Fire and Emergency Services Respiratory Protection	2003
1991	Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies	2000
1992	Standard on Liquid Splash-Protective Ensembles and Clothing for Hazardous Materials Emergencies	2000
1994	Standard on Protective Ensembles for Chemical/Biological Terrorism Incidents	2001
1999	Standard on Protective Clothing for Emergency Medical Operations	2003
2001	Standard on Clean Agent Fire Extinguishing Systems	2000
2112	Standard on Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire	2001
2113	Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire.	2001
5000	Building Construction and Safety Code	2003

(c) The codes listed in Tables 2 through 5 published by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI), the American Petroleum Institute (API), the American Water Works Association (AWWA), and Underwriters Laboratories (UL) as applicable to pressure retaining components including pressure vessels, piping, valves, fittings, flanges and gaskets.

TABLE 2.—ASME BOILER AND PRESSURE VESSEL CODE (2004)

Section	Title
I	Power Boilers.
II	Materials.
III	Rules for Construction of Nuclear Facility Components.
IV	Heating Boilers.
V	Non Destructive Examination.
VI	Recommended Rules for Care and Operation of Heating Boilers.
VII	Recommended Guidelines for the Care of Power Boilers.
VIII	Pressure Vessels.
IX	Welding and Brazing Qualifications.
X	Fiber-Reinforced Plastic Pressure Vessels.
XI	Rules for In-Service Inspection of Nuclear Power Plant Components.

TABLE 3.—ANSI/ASME PIPING CODES

Section	Title	Edition
B31.1	Power Piping	2001
B31.2	Fuel Gas Piping	1968
B31.3	Process Piping	2002
B31.4	Pipeline Transportation Systems, Liquid Hydrocarbon, Other Liquids	2002
B31.5	Refrigeration Piping and Hat Transfer Components	2001
B31.8	Gas Transmission and Distribution Piping Systems	2004
B31.9	Building Services Piping	1996
B31.11	Slurry Transportation Piping Systems	2003

TABLE 4.—ASME CODES FOR VALVES, FITTINGS, FLANGES AND GASKETS

Section	Title	Edition
B16.1	Cast Iron Pipe Flanges and Fittings	1998
B16.3	Malleable Iron Threaded Fittings	1998
B16.4	Gray Iron Threaded Fittings	1998
B16.5	Pipe Flanges and Flanged Fittings	1996
B16.9	Factory-Made Wrought Buttwelding Fitting	2001
B16.10	Face-to-Face and End-to-End Dimensions of Valves	2000
B16.11	Forged Fittings Socket-Welding and Threaded	2001
B16.12	Cast Iron Threaded Drainage Fittings	1998
B16.14	Ferrous Pipe Plugs, Bushings and Locknuts with Pipe Threads	1991
B16.15	Cast Iron Bronze Threaded Fittings	1985
B16.18	Cast Copper Alloy Solder Joint Pressure Fittings	2001
B16.20	Metallic Gasket for Pipe Flanges: Ring-Joint Spiral-Wound and Jacketed	1998
B16.21	Nonmetallic Flat Gaskets for Pipe Flanges	1992
B16.22	Wrought Copper and Copper Alloy Solder Joint Pressure Fittings	2001
B16.23	Cast Copper Alloy Solder Joint Drainage Fittings	2002
B16.25	Buttwelding Ends	1997
B16.26	Cast Copper Alloy Fittings for Flared Copper Tubes	1998
B16.28	Wrought Steel Buttwelding Short Radius Elbows and Returns	1994
B16.29	Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings	2001
B16.33	Manually Operated Metallic Gas Valves for Use in Gas Piping Systems up to 125psi	2001
B16.34	Valves-Flanged, Threaded and Welding End	1996
B16.36	Orifice Flanges	1996
B16.38	Large Metallic Valves for Gas Distribution (manually operated NPS 2½ to 12, 125 psig)	1985
B16.39	Malleable Iron Threaded Pipe Unions	2003
B16.40	Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems	2002
B16.42	Ductile Iron Pipe Flanges and Fittings: Classes 150 and 300	2001
B16.44	Manually Operated Metallic Gas Valves for Use in Above Ground Piping Systems up to 5psi	1968
B16.45	Cast Iron Fittings for Solvent Drainage Systems	2002
B16.47	Large diameter Steel Flanges: NPS26 through NPS60	1999
B16.48	Steel Line Blanks	2002
B16.49	Factory-Made Wrought Steel Buttwelding Induction Bends	2001
B16.50	Wrought Copper and Copper Alloy Braze-Joint Pressure Fittings	1992

TABLE 5.—CODES AND STANDARDS FOR ADDITIONAL PRESSURE RETAINING COMPONENTS

Section	Title	Edition
Compressors:		
ASME B19.1	Safety Standard for Air Compressor Systems	1995
ASME B19.3	Safety Standard for Compressor for Process Industries	1991
Pumps:		
API–610	Centrifugal Pump for General Refinery Service, American Petroleum Institute	2003
Tanks:		
ASME B96.1	Welder Aluminum Alloy Storage Tanks	1991
API–620	Design and Construction of Large Welded Low Pressure Storage	2002
API–650	Atmospheric Welded Steel Tanks for Oil Storage, American Petroleum Institute	1996
AWWA–D100	Welded Steel Tanks for Water Storage, American Water Works Association	1996
API–2000	Venting Atmospheric and Low Pressure Storage Tanks	1998
API–2510	Design and Construction of Liquid Petroleum Gas (LPG) Installations	2001
UL–58	Steel Underground Tanks for Flammable and Combustible Liquids, Underwriters Valve Laboratories	1998
UL–142	Steel Aboveground Tanks for Flammable and Combustible Liquids, Underwriters Laboratories	2003
API–653	Tank Inspection, Repair, and Reconstruction, American Petroleum Institute	2001
Pressure Vessel:		
API–660	Shell and Tube Heat Exchange to General Refinery Service, American Petroleum Institute	2001

(d) Exposure limits and technical requirements of the American National Standards Institute (ANSI) contained in the following standards:

(1) Z136.1, Safe Use of Lasers (2000);

(2) Z88.2, Practices for Respiratory Protection (2004); and

(3) Z49.1, Safety in Welding, Cutting and Allied Processes, Sections 4.3 and E4.3 (1999).

(e) American Conference of Governmental Industrial Hygienists (ACGIH) standard, Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, in effect as of [Insert Effective Date of The Final Rule]. This standard shall be used in lieu of OSHA Permissible Exposure Limits in the event that the ACGIH Threshold Limit Values are lower (more protective) than the comparable OSHA limit.

§ 851.202 Construction safety.

(a) A contractor responsible for a workplace with a construction project must:

(1) Prepare an activity-level hazard analysis prior to commencement of affected work. Such an analysis shall:

(i) Identify foreseeable hazards and planned protective and mitigative measures;

(ii) Provide drawings and/or other documentation of protective measures that a Professional Engineer or other competent person is required to prepare; and

(iii) Define the qualifications of competent persons required for workplace inspections.

(2) Inform workers of foreseeable hazards and the protective and mitigative measures described within the activity-level hazard analysis prior to beginning work on the affected construction operation.

(3) Require workers to utilize protective or mitigative measures as a condition of employment as well as acknowledge being informed of the hazards and protective and mitigative measures.

(4) During periods of active construction, have a designated representative, who has received specific training and is knowledgeable about the hazards of construction, on site at all times to conduct and document daily inspections of the workplace, and to identify and correct hazards and instances of noncompliance with project safety and health requirements. Workers must be instructed to report to the designated representative unforeseen hazards not previously identified or evaluated. If immediate corrective action is not possible or the hazard falls outside of project scope, the contractor must immediately notify affected workers, post appropriate warning signs, implement needed interim control measures, and notify DOE of the action taken. The contractor or the designated representative must stop work in the affected area until protective or mitigative measures are established.

(b) With respect to a construction project above the monetary threshold established by the Davis-Bacon Act (40 U.S.C. 276a), a contractor must prepare a written construction project safety and health plan to implement the requirements of paragraph (a) of this section and obtain approval of the plan by DOE prior to commencement of any work covered by the plan. In the plan, the contractor shall designate the individual(s) responsible for on-site implementation of the plan, specify qualifications for those individuals, and provide a list of those project operations to which the health and safety plan applies.

§ 851.203 Fire protection.

(a) A contractor responsible for a workplace must establish and implement a comprehensive fire protection and response program. This program must contain, at a minimum, the following elements:

(1) A current policy statement that describes specific management commitments to support a level of fire protection and response capability sufficient to minimize the potential for losses from fire and related hazards consistent with the best class of protected property in private industry.

(2) Comprehensive, written fire protection criteria that incorporate the requirements of this section, the provisions of the standards delineated in § 851.201, and additional site-specific aspects of the fire protection program. Site-specific aspects include the organization, training, and responsibilities of the fire protection staff, administrative aspects of the fire protection program, and requirements for the design, installation, operability, inspection, maintenance, and testing of fire protection systems.

(3) Written fire safety procedures governing the use and storage of combustible, flammable, radioactive, and hazardous materials so as to minimize the risk from fire. Such procedures must also exist for fire protection system impairments and for activities such as smoking, hot work, safe operation of process equipment, and other fire prevention measures that contribute to the decrease in fire risk.

(4) A requirement to incorporate the DOE fire protection program in the plans and specifications for all new facilities and for significant modifications of existing facilities, including a written review by a qualified fire protection engineer of plans, specifications, procedures, and acceptance tests.

(5) Fire hazards analyses (FHAs), developed using a graded approach, for all nuclear facilities, significant new facilities, and facilities that represent unique or significant fire safety risks.

(6) Access to a qualified and trained fire protection staff, including a fire protection engineers, technicians, and fire-fighting personnel.

(7) A current Baseline Needs Assessment that establishes the minimum required capabilities of site fire-fighting forces needed to assure worker safety and health. This includes minimum staffing, apparatus, facilities, equipment, training, fire pre-plans, off-site assistance requirements, and procedures. Information from this assessment must be incorporated into the site Emergency Plan. Such assessments shall be updated as needed but at least every three years.

(8) Written pre-fire strategies, plans, and standard operating procedures for special hazards to enhance the effectiveness of any site fire-fighting forces.

(9) A comprehensive, documented fire protection self-assessment program, which includes all aspects (program and facility) of the fire protection program. Assessments must be performed on a regular basis, but at least every three years.

(10) A program to identify, prioritize, and monitor the status of fire protection-related appraisal findings/recommendations until final resolution is achieved.

(11) Provision for interim compensatory measures to minimize fire risk if final resolution under paragraph (a)(10) will be significantly delayed.

(12) A process for reviewing and recommending approval of fire safety code and standard equivalencies to the Site Manager.

(13) Fire safety performance measures, approved by the Site Manager, that provide a basis for evaluating the success or failure of all major elements of the site fire protection and response program.

(b) The contractor must review in-depth, and if appropriate, perform or update any analysis or assessment required under paragraphs (a)(5), (a)(7), and (a)(9) of this section at least once every three years. With respect to non-nuclear facilities, the Site Manager may approve a longer period for updating the

document via a written memorandum to the contractor.

(c) A contractor responsible for the design of a new DOE facility or major modification to an existing DOE facility must ensure that the design provides:

(1) A reliable water supply of adequate capacity for fire suppression.

(2) Noncombustible or fire-resistive construction, where appropriate, including complete fire-rated barriers, that is commensurate with the fire hazard to isolate hazardous occupancies and to minimize fire spread.

(3) Automatic fire extinguishing systems throughout all nuclear and other significant facilities and in all areas subject to significant life safety hazards.

(4) A means to summon the fire department in the event of a fire, such as a fire alarm signaling system.

(5) A means to notify and evacuate building occupants in the event of a fire, such as a fire detection or fire alarm system and illuminated, protected egress paths.

(6) Physical access and appropriate equipment to facilitate effective intervention by the fire department, such as an interior standpipe system(s) in multi-story or large facilities with complex configurations.

(7) Fire and related hazards that are unique to DOE and are not addressed by industry codes and standards shall be protected by isolation, segregation, or use of special fire control systems, such as inert gas or explosion suppression, as determined by the FHA.

§ 851.204 Explosives safety.

A contractor responsible for a workplace involving the use of explosive materials (except materials used only for routine construction, demolition, and tunnel blasting) must establish and implement a comprehensive explosives safety program. This program must contain, at a minimum, the following elements:

(a) The Contractor must establish plans and procedures to achieve:

(1) Protection of explosives from abnormal stimuli and adverse environments;

(2) Proper hazard identification, analysis, controls and communication;

(3) Safe work environment, including proper personnel protection, safe equipment, processing, testing, and material handling, and

(4) Effective measures for security and emergency control.

(b) The contractor must maintain limits and controls on the maximum number of personnel permitted in the workplace, commensurate with personnel protection and work efficiency.

(c) The contractor must require use of personal protective equipment in order to protect personnel from the specific hazards of the operations.

(d) Pursuant to an approved training and certification program, the contractor must properly train personnel before they are assigned to explosive operations or to operate any explosive transport vehicle. Each contractor must have an approved training and certification program.

(e) Quantity-distance criteria must account for:

(1) The types and severity of hazards each explosive material present;

(2) The construction and orientation of facilities to which the criteria are applied; and

(3) The degree of protection desired for personnel and facilities adjacent to the explosives operations.

(f) The contractor must base the level of protection required for an explosives activity on the hazard class (accident potential) for the explosive activity involved, as follows:

(1) Bays for Class IV (negligible probability of accidental initiation) activities must provide protection from fire hazard effects.

(2) Bays for Class III (low accident potential) activities must provide protection from explosion propagation from bay-to-bay within buildings and between buildings located at intra-line or magazine distance.

(3) Bays for Class II (moderate accident potential) activities must comply with the requirements of Class III bays, and in addition provide protection to prevent fatalities and severe personnel injuries in all occupied areas other than the bay of occurrence.

(4) Bays for Class I (high accident potential) activities must comply with the requirements of Class II bays, and in addition provide protection to prevent serious injuries to all personnel, including personnel performing the activity, persons in other occupied areas, and transients.

(5) Bays for joint explosives-plutonium activities must also comply with the following:

(i) Bays for Uncased Explosives Plutonium Activities. Where it is necessary to store, handle, or process uncased explosives components and plutonium in the same bay, the enclosing structure and its ventilation, electrical, fire protection, and utility systems must be designed to assure that, if all the explosives present should detonate, radiation exposures are within applicable limits for hypothesized accidental releases. The documented safety analysis governs the quantity of plutonium allowed in such a bay. Activities may be performed in Class IV bays if only insensitive high explosives (IHE), IHE subassemblies, or IHE weapons are present; however, criticality considerations must govern the quantity of plutonium allowed.

(ii) Bays for Cased Explosives Plutonium Activities. When handling or processing cased high explosive components that contain plutonium, the enclosing structure must be designed as a Class II (moderate accident potential) explosives bay. Storage must conform to Class III (low accident potential) requirements. The plutonium quantity must be limited to 55 lbs (25 kg) per bay. Activities may be performed in Class IV bays if only IHE, IHE subassemblies, or IHE weapons are present; however, criticality considerations govern the quantity of plutonium allowed.

(f) *Fire protection.* A comprehensive operational safety plan shall be developed to control personnel and facility design. Automatic fire suppression systems must be installed in all buildings containing high explosives and plutonium, with the exception of storage magazines. The fire protection system design must ensure that the system in any bay remains operable should detonation occur in any other bay. Firebreaks shall be established around all explosives handling facilities.

(g) *Explosive facility siting and design criteria references.* Blast-resistant design for personnel and facility protection must be based on the TNT equivalency of the maximum quantity of explosives and propellants, plus 20 per cent. The technical basis for location, engineering, design, and operation (under normal and potential design basis accident conditions) of buildings must comply with approved guidelines to achieve the most conservative design for the protection of workers.

(h) *Electrical storms and lightning protection.* The contractor must provide protection to personnel working in explosive areas, and personnel near those areas, from the consequences of an explosive incident resulting from a lightning strike by developing and implementing a Lightning Detection and Warning Plan that includes as a minimum:

(1) Evaluation of lightning risk;

(2) Lightning protection system installation, employing Mast, Catenary, Integral Air Terminal, surge suppressor, bonding, Faraday cage, or partial Faraday cage;

(3) Techniques and procedures for initial installation of each approved lightning protection system;

(4) Techniques and procedures for retrofitting structures to a partial Faraday cage type of lightning protection, if a decision is made to retrofit the structure; and

(5) Administrative control such as stopping of work and evacuation of personnel in the event of a lightning warning.

§ 851.205 Pressure retaining component safety.

(a) A contractor responsible for a workplace must establish safety policies and procedures to ensure that pressure systems are designed, fabricated, tested, inspected, maintained, repaired, and operated by trained and qualified personnel in accordance with applicable and sound engineering principles.

(b) If national consensus codes and standards in § 851.201 are determined not to be applicable following an independent peer review process, the contractor must implement DOE-approved measures (if allowed by the governing provisions of the code or consensus standard) based upon a reasonable interpretation of the intent of existing standards. If the applicable provisions of the code or consensus standard do not permit clarification or interpretation, the contractor must provide equivalent protection and ensure safety equal to or superior to the intent of the closest applicable code or standard following an independent peer review process, subject to DOE approval.

§ 851.206 Motor vehicle safety.

(a) A contractor responsible for a workplace must implement a motor vehicle safety program to protect the safety and health of all drivers and passengers in Government-owned or -leased motor vehicles and powered industrial equipment (*i.e.*, fork trucks, tractors, platform lift trucks, and other similar specialized equipment powered by an electric motor or an internal combustion engine).

(b) The contractor must tailor the motor vehicle safety program to the individual DOE site or facility, based on an analysis of the needs of that particular site or facility.

(c) The motor vehicle safety program must include:

(1) Minimum licensing requirements (including appropriate testing and medical qualification) for personnel operating motor vehicles and powered industrial equipment;

(2) Requirements for the use of seat belts and provision of other safety devices.

(3) Training for specialty vehicle operators;

(4) Requirements for motor vehicle maintenance and inspection;

(5) Uniform traffic and pedestrian control devices and road signs;

(6) On-site speed limits and other traffic rules;

(7) Awareness campaigns and incentive programs to encourage safe driving; and

(8) Enforcement provisions.

§ 851.207 Biological safety.

A contractor responsible for a workplace must establish and implement a biological safety program that:

(a) Establishes an Institutional Biosafety Committee (IBC) or equivalent. The IBC shall:

(1) Review any work with biological etiologic agents for compliance with appropriate CDC, NIH, WHO, and other international, Federal, State, and local guidelines and assess the containment level, facilities, procedures, practices, and training and expertise of personnel; and

(2) Review for compliance the site security, safeguards, and emergency management plans and procedures, as related to work with biological etiologic agents.

(b) Maintains a readily retrievable inventory and status of biological etiologic agents, and provides to the responsible field and area office, through the laboratory IBC (or its equivalent), an annual status report describing the status and inventory of biological etiologic and program.

(c) Provides for submission to the head of the appropriate DOE field element, for review and concurrence before transmittal to the Center for Disease Control (CDC), each Laboratory Registration/Select Agent Program registration application package requesting registration of a laboratory facility at Biosafety Level 2, 3, or 4, for the purpose of transferring, receiving, or handling biological select agents.

(d) Provides for submission to the head of the appropriate DOE field element a copy of each CDC Form EA–101, Transfer of Select Agents, upon initial submission of the Form EA–101 to a vendor or other supplier requesting or ordering a biological select agent for transfer, receipt, and handling in the registered facility. Submit the completed copy of the Form EA–101, documenting final disposition and/or destruction of the select agent, within 10 days of completion of the Form EA–101.

(e) Confirms that the site safeguards and security plans and emergency management programs address biological etiologic agents, with particular emphasis on biological select agents.

(f) Establishes an immunization policy for personnel working with biological etiologic agents based on the DOE facility evaluation of risk and benefit of immunization.

§ 851.208 Firearms safety.

(a) A contractor responsible for a workplace must establish firearms safety policies and procedures for security operations and training to ensure proper accident prevention controls are in place.

(1) Written procedures must address firearms safety, engineering and administrative controls, as well as personal protective equipment requirements. For security operations conducted in accordance with policy on counter terrorism, use of Department of Defense military type masks for respiratory protection by security personnel is acceptable.

(2) As a minimum, procedures must be established for:

(i) Storage, handling, cleaning, inventory, and maintenance of firearms and associated ammunition;

(ii) Activities such as loading, unloading, and exchanging firearms. These procedures must address use of bullet containment devices and those techniques to be used when no bullet containment device is available;

(iii) Use and storage of pyrotechnics, explosives, and/or explosive projectiles;

(iv) Handling misfires, duds, and unauthorized discharges;

(v) Live fire training, qualification, and evaluation activities;

(vi) Training and exercises using engagement simulation systems;

(vii) Medical response at firearms training facilities; and

(viii) Use of firing ranges by personnel other than DOE or DOE contractor protective forces personnel.

(b) A contractor must ensure that personnel responsible for the direction and operation of the firearms safety program are professionally qualified and have sufficient time and authority to implement the procedures under this section.

(c) A contractor must ensure that firearms instructors and armorers have been certified by the Safeguards and Security National Training Center to conduct the level of activity provided. Personnel must not be allowed to conduct activities for which they have not been certified.

(d) A contractor must conduct formal appraisals assessing implementation of procedures, personnel responsibilities, and duty assignments to ensure overall policy objectives and performance

criteria are being met by qualified, responsible personnel.

(e) A contractor must implement procedures related to firearms training, live fire range safety, qualification, and evaluation activities, including procedures requiring that:

(1) Personnel must successfully complete initial firearms safety training before being issued any firearms. Authorization to remain in armed status will continue only if the employee demonstrates the technical and practical knowledge of firearms safety semi-annually;

(2) Authorized armed personnel must demonstrate through documented limited scope performance tests both technical and practical knowledge of firearms handling and safety on a semi-annual basis;

(3) All firearms training lesson plans must incorporate safety for all aspects of firearms training task performance standards. The lesson plans must follow the standards set forth by the Safeguards and Security Central Training Academy's standard training programs;

(4) Firearms safety briefings must immediately precede training, qualifications, and evaluation activities involving live fire and/or engagement simulation systems;

(5) A safety analysis approved by DOE line management must be developed for the facilities and operation of each live fire range prior to implementation of any new training, qualification, or evaluation activity. Results of these analyses must be incorporated into procedures, lesson plans, exercise plans, and limited scope performance tests;

(6) Firing range safety procedures must be conspicuously posted at all primary range facilities;

(7) Live fire ranges, approved by the Site Manager, must be properly sited to protect personnel on the range, as well as personnel and property not associated with the range.

(f) Contractors must develop a safety or risk analysis for all facilities or areas in which firearms will be introduced in accordance with the local protection strategy. Such analyses must be approved by DOE line management.

(g) Contractors must ensure that the transportation, handling, placarding, and storage of munitions conform to the applicable requirements of DOE policy directives.

§ 851.209 Industrial hygiene.

(a) A contractor responsible for a covered workplace must implement a comprehensive and effective industrial hygiene program to reduce the risk of work-related disease or illness.

(b) The industrial hygiene program must include the following elements:

(1) Initial or baseline surveys of all work areas or operations to identify and evaluate potential worker health risks;

(2) Coordination with planning and design personnel to anticipate and control health hazards that proposed facilities and operations would introduce;

(3) Coordination with cognizant occupational medical, environmental, health physics, and work planning professionals;

(4) Policies and procedures to mitigate the risk from identified and potential occupational carcinogens; and

(5) Professionally and technically qualified industrial hygienists to manage and implement the industrial hygiene program.

§ 851.210 Occupational medicine.

(a) A contractor responsible for a covered workplace must establish and maintain an Occupational Medical Program (OMP) to provide comprehensive occupational health services to contractor employees. At sites with operations performed by more than one contractor, several contractors may agree to use services provided under a single contractor's OMP. A contractor having no employees who work on the DOE site for 30 or more days in a year and who has no workers enrolled in a medical surveillance program, regardless or length of employment, is not required to have an OMP.

(b) The OMP must be directed by a site occupational medical director (SOMD) who must be a graduate of a school of medicine or osteopathy and licensed for the practice of medicine in the state in which the site is located.

(c) Occupational medical physicians, occupational health nurses, physician's assistants, nurse practitioners, psychologists, and other occupational health personnel on the OMP staff must be licensed, registered, or certified as required by Federal or State law where employed.

(d) A contractor must promote communication and coordination between all environmental, safety, and health groups and specifically provide the SOMD with the following:

(1) Current information about actual or potential work-related site hazards (chemical, physical, biological, or ergonomic);

(2) Employee job-task and hazard-analysis information, including essential job functions;

(3) Actual or potential work-site exposures of each employee prior to medical placement or surveillance evaluations;

(4) Notification of employee job transfers;

(5) Notification when an employee has been absent because of an injury or illness for more than 5 consecutive workdays (or an equivalent time period for those individuals on an alternative work schedule);

(6) Information on, and the opportunity to participate in, worker health protection team meetings and committees;

(7) Access to the workplace for evaluation of job conditions and issues relating to workers' health;

(e) The SOMD, or designated OMP staff, must:

(1) Plan and implement the OMP;

(2) Prepare, review and update annually a formal written plan detailing the methods and procedures implementing the OMP and documenting the contractor's compliance with this subsection; and

(3) Participate in worker protection teams to build and maintain necessary partnership among workers, managers, and safety and health professionals in establishing and maintaining a safe and healthful workplace.

(f) A record, containing any medical, clinical, health history, exposure history, and demographic data collected under the OMP, must be developed and maintained for each employee for whom medical services are provided. Beginning January 2007, all OMP medical records should be kept in an electronic format.

(1) Employee medical, psychological, and assistance records must be kept confidential, protected from unauthorized access, and stored under conditions that ensure their long-term preservation. Access to these records shall be provided in accordance with DOE Privacy Act implementing regulations.

(2) The SOMD must determine the content of the worker health evaluations, which must be conducted under the direction of a licensed physician, in accordance with current sound and acceptable medical practices and all pertinent statutory and regulatory requirements, such as the Americans with Disabilities Act.

(3) Each SOMD must maintain an up-to-date list of all evaluations and tests that are offered, submit the list annually through the cognizant Field Element to the Office of Environment, Safety and Health, and make this list openly available to all site workers.

(4) The purpose and nature of these medical tests and their results must be

clearly communicated verbally and in writing to each worker offered testing;

(5) The communication must be documented in the medical chart by the signature of the occupational health examiner and the worker.

(6) The following health evaluations must be conducted when determined necessary by the SOMD for the purpose of providing initial and continuing assessment of employee fitness for duty:

(i) At the time of employment entrance or job transfer, a Medical Placement examination will evaluate the individual's general health and physical and emotional capacity to perform work to establish a baseline record of physical condition and assure fitness for duty.

(ii) Periodic hazard-based medical monitoring or qualification-based fitness for duty evaluations required by regulations and standards, or as recommended by the SOMD, will be provided on the frequency required.

(iii) Diagnostic examinations will evaluate employee's injuries and illnesses to determine work-relatedness, the degree of disability, and if needed, referral for definitive care.

(iv) After a work-related absence or an absence of 5 or more consecutive workdays (or an equivalent time period for those individuals on an alternative work schedule), a return to work evaluation will determine the individual's physical and emotional capacity to perform work and return to duty.

(v) At the time of separation from employment, the individual's general health will be evaluated to establish a record of physical condition.

(g) The SOMD must place an individual under medical restrictions when health evaluations so indicate that the worker should not perform certain job tasks.

(1) The SOMD or designee must notify the worker and contractor management when employee work restrictions are imposed or removed.

(2) The OMP must monitor ill and injured workers to facilitate their rehabilitation and safe return to work and to minimize lost time and its associated costs.

(3) Occupational medical physicians and medical staff must, on a timely basis, communicate results of health trend evaluations to management and site worker health protection professionals responsible for mitigating worksite hazards.

(h) The SOMD must review and approve the medical and behavioral aspects of employee counseling and health promotional programs, including the following types:

(1) Contractor-sponsored or contractor-supported employee assistance programs;

(2) Contractor-sponsored or contractor-supported alcohol and other substance abuse rehabilitation programs; and

(3) Contractor-sponsored or contractor-supported wellness programs.

(4) The SOMD must review the medical aspects of immunization programs, blood-borne pathogens programs, and bio-hazardous waste programs to evaluate their conformance to applicable guidelines.

(i)(1) The SOMD must review and develop procedures consistent with the medical portion of the site emergency and disaster preparedness plans.

(2) The SOMD and staff must integrate the medical portion with nearby community emergency and disaster plans.

Subpart D—Exemption Relief

§ 851.300 Exemptions.

(a) The Cognizant Secretarial Officer who is primarily responsible for the contractor activity to which a worker safety and health requirement applies may grant a temporary or permanent exemption from that requirement.

(b) The Cognizant Secretarial Officer:

(1) Must provide a copy of the exemption request and supporting documentation to the Assistant Secretary for Environment, Safety and Health for a thirty day review;

(2) May not grant the exemption prior to the conclusion of the thirty day review period unless the Assistant Secretary for Environment, Safety and Health comments earlier; and

(3) If the Cognizant Secretarial Officer is not part of NNSA, may not grant the exemption if the Assistant Secretary for Environment, Safety and Health non-concurs during the thirty day review period.

(c) An exemption must set forth in writing:

(1) The requirement for which the exemption is granted;

(2) The basis for the determination that the criteria in § 851.301 have been met;

(3) The workplaces to which and the circumstances under which the exemption applies; and

(4) Any terms and conditions to which the exemption is subject.

(d) The authority to grant or deny exemptions may not be delegated.

§ 851.301 Exemption criteria.

(a) An exemption to a worker safety and health requirement must:

(1) Be consistent with law;

(2) Adequately protect the health and safety of workers;

(3) Be consistent with a safe and healthful workplace free from recognized hazards that are causing or are likely to cause death or serious bodily injury;

(4) Not permit exposure limits that are less protective than the limits required by this part or not otherwise diminish the level of protection afforded workers; and

(5) Involve one of the ''special circumstances'' as set forth in paragraph (b) of this section.

(b) With respect to a particular work environment, ''special circumstances'' means a situation in which:

(1) Application of the requirement leads to a conflict with another applicable statutory, regulatory or contractual requirement; or

(2) Application of the requirement would not serve its underlying purpose;

(3) Application of the requirement is not necessary to achieve its underlying purpose and results in resource impacts that are not justified by the safety improvements; or

(4) Application of the requirement would result in a situation significantly different than that contemplated when the requirement was adopted, or significantly different than that encountered by others similarly situated; or

(5) The exemption would result in benefit to worker safety and health that compensates for any detriment that may result from the grant of the exemption; or

(6) Circumstances exist that would justify temporary relief from application of the requirement while taking good faith action to achieve compliance; or

(7) There is present any other material circumstance not considered when the requirement was adopted for which it would be in the public interest to grant an exemption; or

(8) An exemption would contribute to tailoring the requirements of this part to reflect the hazards and facilities associated with a particular work environment; or

(9) The facility is to be permanently closed and demolished, or title is expected to be transferred to another entity for reuse; or

(10) An exemption would contribute substantially to achieving a national security mission of the Department of Energy in an efficient and timely manner.

§ 851.302 Terms and conditions.

An exemption may contain terms and conditions including provisions that:

(a) Limit its duration;
(b) Require alternative action;
(c) Require partial compliance; or
(d) Establish a schedule for full or partial compliance.

Subpart E—Enforcement Process

§ 851.400 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a contractor with the requirements of this part and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection.

(b) Contractors must fully cooperate with the Director during all phases of the enforcement process and provide complete and accurate records and documentation as requested by the Director during investigation or inspection activities. Contractors who attempt to falsify records or documentation or otherwise mislead the Director during the enforcement process will be subject to full and unmitigated enforcement of this part, and such cases may be referred to the Department of Justice by the Director for potential criminal investigation.

(c) Any person may request the Director to initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection sets forth the subject matter or activity to be investigated or inspected as fully as possible and includes supporting documentation and information.

(d) The Director must inform any contractor that is the subject of an investigation or inspection in writing at the initiation of the investigation or inspection of the general purpose of the investigation or inspection. However, no prior notice of an inspection need be provided to a contractor.

(e) DOE shall not disclose information or documents that are obtained during any investigation or inspection unless the Director directs or authorizes the public disclosure of the investigation. Upon such authorization, the information or documents are a matter of public record and disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and part 1004 of this title.

(f) A request for confidential treatment of information for purposes of the Freedom of Information Act does not prevent disclosure by the Director if the Director determines disclosure to be in the public interest and otherwise permitted or required by law.

(g) During the course of an investigation or inspection, any contractor may submit any document, statement of facts, or memorandum of law for the purpose of explaining the contractor's position or furnish information which the contractor considers relevant to a matter or activity under investigation or inspection.

(h) The Director may convene an informal conference to discuss any situation that might be a violation of a requirement of this part, its significance and cause, any correction taken or not taken by the contractor, any mitigating or aggravating circumstances, and any other useful information. A conference is not normally open to the public and DOE does not make a transcript of the conference. The Director may compel a contractor to attend the conference.

(i) If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the Director may close the investigation without prejudice to further investigation or inspection at any time that circumstances so warrant.

(j) The Director may issue enforcement letters that communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's safety and health program; provided that an enforcement letter may not create the basis for any legally enforceable requirement pursuant to this part.

(k) The Director may sign, issue and serve subpoenas.

§ 851.401 Settlement.

(a) DOE encourages settlement of a proceeding under this subpart at any time if the settlement is consistent with this part. The Director and a contractor may confer at any time concerning settlement. A settlement conference is not open to the public and DOE does not make a transcript of the conference.

(b) Notwithstanding any other provision of this part, the Director may resolve any issues in an outstanding proceeding under this subpart with a consent order.

(1) The Director and the contractor, or a duly authorized representative, must sign the consent order and indicate agreement to the terms contained therein.

(2) A contractor is not required to admit in a consent order that a requirement of this part has been violated.

(3) DOE is not required to make a finding in a consent order that a contractor has violated a requirement of this part.

(4) A consent order must set forth the relevant facts which form the basis for the order and what remedy, if any, is imposed.

(5) A consent order shall constitute a final order.

§ 851.402 Preliminary notice of violation.

(a) Based on a determination by the Director that there is a reasonable basis to believe a contractor has violated or is continuing to violate a requirement of this part, the Director may issue a preliminary notice of violation to the contractor.

(b) The Director must send a preliminary notice of violation by certified mail, return receipt requested.

(c) A preliminary notice of violation must indicate:

(1) The date, facts, and nature of each act or omission upon which each alleged violation is based;

(2) The particular requirement involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty; and

(4) The right of the contractor to submit a written reply to the Director within 30 calendar days of receipt of the preliminary notice of violation.

(d) A reply to a preliminary notice of violation must contain a statement of all relevant facts pertaining to an alleged violation.

(1) The reply must:

(i) State any facts, explanations and arguments which support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE; and

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice.

(2) Copies of all relevant documents must be submitted with the reply.

(e) If a contractor fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(1) The contractor relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any proposed remedies therein, constitutes a final order.

§ 851.403 Final notice of violation.

(a) If a contractor submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the

Director must review the submitted reply and make a final determination whether the contractor violated or is continuing to violate a requirement of this part.

(b) Based on a determination by the Director that a contractor has violated or is continuing to violate a requirement of this part, the Director may issue to the contractor a final notice of violation that states concisely the determined violation and any remedy, including the amount of any civil penalty imposed on the contractor. The final notice of violation must state that the contractor may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, subpart G.

(c) The Director must send a final notice of violation by certified mail, return receipt requested.

(d) If a contractor fails to submit a petition for review to the Office of Hearings and Appeals within 30 calendar days of receipt of a final notice of violation pursuant to § 851.45:

(1) The contractor relinquishes any right to appeal any matter in the final notice; and

(2) The final notice, including any remedies therein, constitutes a final order.

§ 851.404 Administrative appeal.

(a) Any contractor that receives a final notice of violation may petition the Office of Hearings and Appeals for review of the final notice in accordance with part 1003, subpart G of this title, within 30 calendar days from receipt of the final notice.

(b) In order to exhaust administrative remedies with respect to a final notice of violation, the contractor must petition the Office of Hearings and Appeals for review in accordance with paragraph (a) of this section.

§ 851.405 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

(1) Subpoenas;

(2) Orders to compel attendance;

(3) Disclosures of information or documents obtained during an investigation or inspection;

(4) Preliminary notices of violations; and

(5) Final notices of violations.

(b) The NNSA Administrator shall act after consideration of the Director's recommendation.

Appendix A to Part 851.—General Statement of Enforcement Policy

I. Introduction

(a) This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to ensure compliance with its worker safety and health regulations, and, in particular, exercise the civil penalty authority provided to DOE in section 3173 of Public Law 107–314, Bob Stump National Defense Authorization Act for Fiscal Year 2003 (December 2, 2002) (''NDAA''), amending the Atomic Energy Act (''AAEA'') to add section 234C. The policy set forth herein is applicable to violations of safety and health regulations in this part by DOE contractors, including DOE contractors who are indemnified under the Price Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the regulations in this part. It is not intended to establish a ''cookbook'' approach to the initiation and resolution of situations involving noncompliance with the regulations in this part. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement sanctions are appropriate and, if so, the appropriate magnitude of those sanctions. DOE may well deviate from this policy statement when appropriate in the circumstances of particular cases. This policy statement is not applicable to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval Nuclear Propulsion, or otherwise excluded from the scope of the rule.

(b) The DOE goal in the compliance arena is to enhance and protect the safety and health of workers at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that actively seeks to attain and sustain compliance with the regulations in this part. The enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for the open and prompt identification and reporting of noncompliances, performance of effective root cause analysis, and initiation of comprehensive corrective actions to resolve both noncompliance conditions and program or process deficiencies that led to noncompliance.

(c) In the development of the DOE enforcement policy, DOE recognizes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious incidents. This can be accomplished by providing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect human health and the environment. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. DOE will give due consideration to such initiatives and activities in exercising its enforcement discretion.

(d) DOE may modify or remit civil penalties in a manner consistent with the mitigation and adjustment factors set forth in this policy with or without conditions. DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate discretion in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of safety vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to DOE facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the safety and health of workers at DOE facilities by:

(a) Ensuring compliance by DOE contractors with the regulations in this part.

(b) Providing positive incentives for DOE contractors:

(1) Timely self-identification of worker safety deficiencies;

(2) Prompt and complete reporting of such deficiencies to DOE;

(3) Prompt correction of safety deficiencies in a manner that precludes recurrence; and,

(4) Identification of modifications in practices or facilities that can improve worker safety and health.

(c) Deterring future violations of DOE requirements by a DOE contractor.

(d) Encouraging the continuous overall improvement of operations at DOE facilities.

III. Statutory Authority

The Department of Energy Organization Act, 42 U.S.C. 7101–7385o, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911, and the Atomic Energy Act of 1954, as amended, (AEA) 42 U.S.C. 2011, require DOE to protect the public safety and health, as well as the safety of workers at DOE facilities, in conducting its activities, and grant DOE broad authority to achieve this goal. Section 234C of the AEA makes DOE contractors covered by the DOE Price-Anderson indemnification system, and it makes their subcontractors and suppliers subject to civil penalties for violations of the worker safety and health requirements promulgated in this part. 42 U.S.C. 2282c.

IV. Responsibilities

(a) The Director, as the principal enforcement officer of the DOE, has been delegated the authority to: (1) Conduct enforcement inspections, investigations, and conferences; (2) issue Notices of Violations and proposed civil penalties, Enforcement Letters, Consent Orders, and subpoenas; and (3) issue orders to compel attendance and disclosure of information or documents obtained during an investigation or inspection. The Secretary issues Compliance Orders.

(b) The NNSA Administrator, rather than the Director, signs, issues and serves the

following actions that direct NNSA contractors: (1) Subpoenas; (2) Orders to compel attendance; (3) Disclosure of information or documents obtained during an investigation or inspection; (4) Preliminary Notices of Violations; and (5) Final Notices of Violations. The NNSA Administrator acts after consideration of the Director's recommendation.

V. Procedural Framework

(a) Title 10 CFR part 851 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of an administrative appeal in the event a DOE contractor elects to petition the Office of Hearings and Appeals for review.

(b) Pursuant to 10 CFR part 851 subpart E, the Director initiates the enforcement process by initiating and conducting investigations and inspections and issuing a Preliminary Notice of Violation (PNOV) with or without a proposed civil penalty. The DOE contractor is required to respond in writing to the PNOV within 30 days, either: (1) Admitting the violation and waiving its right to contest the proposed civil penalty and paying it; (2) admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty; or (3) denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE contractor's response, the Director may determine: (1) that no violation has occurred; (2) that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part, or; (3) that the violation occurred as alleged in the PNOV and that the proposed civil penalty is appropriate, notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director will issue a Final Notice of Violation (FNOV) or an FNOV and proposed civil penalty.

(c) An opportunity to challenge an FNOV is provided in administrative appeal provisions. 10 CFR 851.45. Any contractor that receives an FNOV may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, Subpart G, within 30 calendar days from receipt of the final notice. An administrative appeal proceeding is not initiated until the DOE contractor against which an FNOV has been issued requests an administrative hearing rather than waiving its right to contest the FNOV and proposed civil penalty, if any, and paying the civil penalty. However, it should be emphasized that DOE encourages the voluntary resolution of a noncompliance situation at any time, either informally prior to the initiation of the enforcement process or by consent order before or after any formal proceeding has begun.

VI. Severity of Violations

(a) Violations of the worker safety and health requirements in this part have varying degrees of safety and health significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Violations of the worker safety and health requirements are categorized in two levels of severity to identify their relative seriousness. Notices of Violation issued for noncompliance when appropriate, propose civil penalties commensurate with the severity level of the violations involved.

(b) To assess the potential safety and health impact of a particular violation, DOE will categorize violations of worker safety and health requirements as follows:

(1) A Severity Level I violation is a serious violation. A serious violation shall be deemed to exist in a place of employment if there is a potential that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment. A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $70,000.

(2) A Severity Level II violation is an other-than-serious violation. An other-than-serious violation occurs where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to employees but does have a direct relationship to their safety and health. A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($35,000).

(c) *De minimis* violations, defined as a deviation from the requirement of a standard that has no direct or immediate relationship to safety or health, will not be the subject of formal enforcement action through the issuance of a Notice of Violation.

(d) The severity level of a violation will be dependent, in part, on the degree of culpability of the DOE contractor with regard to the violation. Thus, inadvertent or negligent violations will be viewed differently from those in which there is gross negligence, deception, or willfulness. In addition to the significance of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of the person involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the severity level of a violation and proposed civil penalty, the lack of such involvement will not constitute grounds to reduce the severity level of a violation or mitigate a civil penalty. Allowance of mitigation in such circumstances could encourage lack of management involvement in DOE contractor activities and a decrease in protection of worker safety and health.

(e) Other factors which will be considered by DOE in determining the appropriate severity level of a violation are the duration of the violation, the past performance of the DOE contractor in the particular activity area involved, whether the DOE contractor had prior notice of a potential problem, and whether there are multiple examples of the violation in the same time frame rather than an isolated occurrence. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of each case.

(f) DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the severity level of a violation involving either failure to make a required report or notification to the DOE or an untimely report or notification will be based upon the significance of, and the circumstances surrounding, the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was actually aware or should have been aware of the condition or event which it failed to report.

(g) The Director may consider the extent to which facility-related and legacy hazards have been mitigated through the use of administrative controls and/or personal protective equipment in determining whether a citation will be issued.

VII. Enforcement Conferences

(a) Should DOE determine, after completion of all assessment and investigation activities associated with a potential or alleged violation of the worker safety and health requirements, that there is a reasonable basis to believe that a violation has actually occurred, and the violation may warrant a civil penalty or issuance of an enforcement action, DOE will normally hold an enforcement conference with the DOE contractor involved prior to taking final enforcement action. The enforcement conference may be conducted onsite at the conclusion of a field investigation/inspection. DOE may also elect to hold an enforcement conference for potential violations which would not ordinarily warrant a civil penalty or enforcement action but which could, if repeated, lead to such action. The purpose of the enforcement conference is to: (1) Assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based; (2) discuss the potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE contractor's corrective actions; (3) determine whether there are any aggravating or mitigating circumstances; and (4) obtain other information which will help determine whether enforcement action is appropriate and, if so, the extent of that enforcement action.

(b) DOE contractors will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid pre-decisional discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of worker safety and health, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VIII. Enforcement Letter

(a) In cases where DOE has decided not to conduct an investigation or inspection or

issue a Preliminary Notice of Violation (PNOV), DOE may send an Enforcement Letter to the contractor, signed by the Director. The Enforcement Letter is intended to communicate the basis of the decision not to pursue enforcement action for a noncompliance. The Enforcement Letter is intended to direct contractors to the desired level of worker safety and health performance. It may be used when DOE concludes the specific noncompliance at issue is not of the level of significance warranted to conduct an investigation or inspection or for issuance of a PNOV. Even where a noncompliance may be significant, the Enforcement Letter recognizes that the contractor's actions may have attenuated the need for enforcement action. The Enforcement Letter will typically recognize how the contractor handled the circumstances surrounding the noncompliance, address additional areas requiring the contractor's attention, and address DOE's expectations for corrective action.

(b) In general, Enforcement Letters communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's safety and health program. DOE might, for example, wish to recognize some action of the contractor that is of particular benefit to worker safety and health that is a candidate for emulation by other contractors. On the other hand, DOE may wish to bring a program shortcoming to the attention of the contractor that, but for the lack of worker safety and health significance of the immediate issue, might have resulted in the issuance of a PNOV. An Enforcement Letter is not an enforcement action.

(c) With respect to many noncompliances, an Enforcement Letter may not be required. When DOE decides that a contractor has appropriately corrected a noncompliance or that the significance of the noncompliance is sufficiently low, it may close out its review simply through an annotation in the DOE Noncompliance Tracking System (NTS). A closeout of a noncompliance with or without an Enforcement Letter may only take place after DOE has confirmed that corrective actions have been completed.

IX. Enforcement Actions

(a) This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties.

(b) The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation.

1. Notice of Violation

(a) A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of DOE that one or more violations of the worker safety and health requirements have occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe corrective steps which have been taken and the results achieved; remedial actions which will be taken to prevent recurrence; and the date by which full compliance will be achieved.

(b) DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in this section, the Notice of Violation will be issued in conjunction with the proposed imposition of a civil penalty. In certain limited instances, as described in this section, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued for willful violations, or if past corrective actions for similar violations have not been sufficient to prevent recurrence and there are no other mitigating circumstances, or if the circumstances otherwise warrant increasing lower severity level violations to a higher severity level.

(c) DOE contractors are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with the worker safety and health requirements.

(d) DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all the worker safety and health requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at DOE facilities. Accordingly, this policy should not be construed to excuse personnel errors.

(e) The limitations on remedies under Sec. 234C will be implemented as follows:

(1) DOE may assess civil penalties of up to $70,000 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). 10 CFR 851.4(c). DOE will not assess civil penalties on contractors (and their subcontractors and suppliers) that are not indemnified under the Price-Anderson Act.

(2) DOE may seek contract fee reductions through the contract's Conditional Payment of Fee Clause in the Department of Energy Acquisition Regulation (DEAR). See 10 CFR 851.4(b); 48 CFR parts 923, 952, 970. Policies for contract fee reductions are not established by this policy statement. The contracting officer must coordinate with the Director, the DOE Official to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of this part, before pursuing contract fee reduction in the event of a violation relating to the enforcement of worker safety and health concerns. Likewise, the Director must coordinate with the contracting officer when conducting investigations and pursuing an enforcement action.

(3) For the same violation of a worker safety and health requirement in this part, DOE may pursue either civil penalties (for indemnified contractors and their subcontractors and suppliers) or a contract fee reduction, but not both. 10 CFR 851.4(d).

(4) An upper ceiling applies to civil penalties assessed on certain contractors specifically listed in 170d. of the Atomic Energy Act, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. For these contractors, the total amount of civil penalties and contract penalties in a fiscal year may not exceed the total amount of fees paid by DOE to that entity in that fiscal year. 10 CFR 851.4(e).

(5) DOE will not issue civil penalties under both this part and under the nuclear safety procedural regulations in 10 CFR part 820 for the same violation. 10 CFR 851.4(f).

(f) The Director will coordinate all violations with the appropriate DOE official responsible for administering the Conditional Payment of Fee clause to consider invoking the provisions for reducing contract fees if the violation: (1) Is especially egregious; (2) indicates a general failure to perform under the contract with respect to worker safety and health; or (3) where the responsible DOE line management believes a violation requires swift enforcement and corrective action. The responsible DOE line management would focus on factors such as willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls. Such factors involved in a violation would call into question a contractor's commitment and ability to achieve the fundamental obligation of providing safe and healthy workplaces for workers. A notice of violation may still be issued should the election of a contract fee reduction be made. In such cases, the notice of violation will not include a civil penalty. The notice of violation will indicate that no civil penalty is being imposed because DOE has elected a contract fee reduction as the remedy.

2. Civil Penalty

(a) A civil penalty is a monetary penalty that may be imposed for violations of requirements of this part. See 10 CFR 851.4(b). Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE contractor self-identification, reporting, and correction of violations of the worker safety and health requirements in this part.

(b) Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in this section, civil penalties will be proposed for Severity Level I and II violations.

(c) DOE will impose different base level penalties considering the severity level of the violation by Price-Anderson indemnified contractors. Table A–1 shows the daily base civil penalties for the various categories of severity levels. However, as described above in section IV, the imposition of civil penalties will also take into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge.

(d) Enforcement personnel will utilize risk-based criteria to assist the Director in determining appropriate civil penalties for violations found during investigations and inspections.

(e) Regarding the factor of ability of DOE contractors to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE contractor out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account. However, DOE will evaluate the relationship of affiliated entities to the contractor (such as parent corporations) when the contractor asserts that it cannot pay the proposed penalty.

(f) DOE will review each case involving a proposed civil penalty on its own merits and adjust the base civil penalty values upward or downward appropriately. As indicated above, Table A–1 identifies the daily base civil penalty values for different severity levels. After considering all relevant circumstances, civil penalties may be raised or lowered based upon the adjustment factors described below in this section. In no instance will a civil penalty for any one violation exceed the statutory limit of $70,000. However, it should be emphasized that if the DOE contractor is or should have been aware of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, each day the condition existed may be considered a separate violation and, as such, subject to a separate civil penalty. Further, as described in this section, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE A–1.—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (Percentage of maximum per violation per day)
I	100
II	50

3. Adjustment Factors

(a) DOE's enforcement program is not an end in itself, but a means to achieve compliance with the worker safety and health requirements in this part, and civil penalties are intended to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage early identification and reporting of worker protection deficiencies and violations of the worker safety and health requirements in this part by the DOE contractors themselves rather than by DOE, and the prompt correction of any deficiencies and violations so identified. DOE believes that DOE contractors are in the best position to identify and promptly correct noncompliance with the worker safety and health requirements in this part. DOE expects that these contractors should have in place internal compliance programs which will ensure the detection, reporting, and prompt correction of worker protection-related problems that may constitute, or lead to, violations of the worker safety and health requirements in this part, before, rather than after, DOE has identified such violations. Thus, DOE contractors will almost always be aware of worker safety and health problems before they are discovered by DOE. Obviously, worker safety and health is enhanced if deficiencies are discovered (and promptly corrected) by the DOE contractor, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of worker safety and health-related problems by DOE contractors has the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with all appropriate DOE contractors.

(b) Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting, and prompt correction of problems which constitute, or could lead to, violations of the worker safety and health requirements. Thus, application of the adjustment factors set forth below may result in a reduced or no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE contractor.

(c) On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

(d) Further, in cases involving factors of willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

4. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Table A–1 may be given when a DOE contractor identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE contractor does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with the worker safety and health requirements are not taken.

5. Self-Identification and Tracking Systems

(a) DOE strongly encourages contractors to self-identify noncompliances with the worker safety and health requirements before the noncompliances lead to a string of similar and potentially more significant events or consequences. When a contractor identifies a noncompliance through its own self-monitoring activity, DOE will normally allow a reduction in the amount of civil penalties, unless prior opportunities existed for contractors to identify the noncompliance. DOE will normally not allow a reduction in civil penalties for self-identification if significant DOE intervention was required to induce the contractor to report a noncompliance.

(b) Self-identification of a noncompliance is possibly the single most important factor in considering a reduction in the civil penalty amount. Consideration of self-identification is linked to, among other things, whether prior opportunities existed to discover the violation, and if so, the age and number of such opportunities; the extent to which proper contractor controls should have identified or prevented the violation; whether discovery of the violation resulted from a contractor's self-monitoring activity; the extent of DOE involvement in discovering the violation or in prompting the contractor to identify the violation; and the promptness and completeness of any required report. Self-identification is also considered by DOE in deciding whether to pursue an investigation.

(c) DOE will use the voluntary Noncompliance Tracking System (NTS) which allows contractors to elect to report noncompliances. In the guidance document supporting the NTS, DOE will establish reporting thresholds for reporting items of noncompliance of potentially greater worker safety and health significance into the NTS. Contractors are expected, however, to use their own self-tracking systems to track noncompliances below the reporting threshold. This self-tracking is considered to be acceptable self-reporting as long as DOE has access to the contractor's system and the contractor's system notes the item as a noncompliance with a DOE safety and health requirement. For noncompliances that are below the reportability thresholds, DOE will credit contractor self-tracking as representing self-reporting. If an item is not reported in NTS but only tracked in the contractor's system and DOE subsequently finds the facts and their worker safety and health significance have been significantly mischaracterized, DOE will not credit the internal tracking as representing appropriate self-reporting.

6. Self-Disclosing Events

(a) DOE expects contractors to demonstrate acceptance of responsibility for worker safety and health by proactively identifying noncompliance conditions in their programs and processes. When the occurrence of an event discloses noncompliances that the contractor could have or should have identified before the event, DOE will not generally allow a reduction in civil penalties for self-identification, even if the underlying noncompliances were reported to DOE. In deciding whether to reduce any civil penalty proposed for violations revealed by the occurrence of a self-disclosing event, DOE will consider the ease with which a contractor could have discovered the noncompliance and the prior opportunities that existed to discover the noncompliance. If a contractor simply reacts to events that disclose potentially significant consequences or downplays noncompliances which did not result in significant consequences to worker safety and health, such contractor actions do not constitute the type of proactive behavior necessary to prevent significant events from occurring and thereby to the improvement in worker safety and health.

(b) The key test is whether the contractor reasonably could have detected any of the underlying noncompliances that contributed to the event. Examples of events that provide opportunities to identify noncompliances include, but are not limited to:

(1) Prior notifications of potential problems such as those from DOE operational experience publications or vendor equipment deficiency reports;

(2) Normal surveillance, quality assurance performance assessments, and post-maintenance testing;

(3) Readily observable parameter trends; and

(4) Contractor employee or DOE observations of potential worker safety and health problems.

(c) Failure to utilize these types of events and activities to address noncompliances may result in higher civil penalty assessments or a DOE decision not to reduce civil penalty amounts.

(d) Alternatively, if, following a self-disclosing event, DOE finds that the contractor's processes and procedures were adequate and the contractor's personnel generally behaved in a manner consistent with the contractor's processes and procedures, DOE could conclude that the contractor could not have been reasonably expected to find the single procedural noncompliance that led to the event and thus, might allow a reduction in civil penalties.

7. Corrective Action To Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE contractor takes corrective action, including actions to identify root cause and prevent recurrence, may result in an increase or decrease in the base civil penalty shown in Table A–1. For example, very extensive corrective action may result in DOE's reducing the proposed civil penalty up to 50% from the base value shown in Table A–1. On the other hand, the civil penalty may be increased if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

8. DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE worker safety and health requirement results, in part or entirely, from a direction given by DOE personnel to a DOE contractor to either take or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, or may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 851.5, no interpretation of a requirement of this part is binding upon DOE unless issued in writing by the Office of the General Counsel. Further, as discussed above in this policy statement, lack of funding by itself will not be considered as a mitigating factor in enforcement actions.

9. Exercise of Discretion

Because DOE wants to encourage and support DOE contractor initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

(a) In accordance with the previous discussion, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

(1) The violation is promptly identified and reported to DOE before DOE learns of it or the violation is identified by a DOE independent assessment, inspection or other formal program effort.

(2) The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

(3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.

(4) The DOE contractor has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

(b) DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

(c) In situations where corrective actions have been completed before termination of an inspection or assessment, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the noncompliance issue and any corrective actions can be properly tracked and monitored.

(d) If DOE initiates an enforcement action for a violation, and as part of the corrective action for that violation, the DOE contractor identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE contractor acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the concern arising out of the initial violation.

(e) It should be emphasized that the preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

X. Inaccurate and Incomplete Information

(a) A violation of the worker safety and health requirements to provide complete and accurate information to DOE, 10 CFR 851.7, can result in the full range of enforcement sanctions, depending upon the circumstances of the particular case and consideration of the factors discussed in this section. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a DOE contractor normally will be categorized based on the guidance in section VI, ''Severity of Violations.''

(b) DOE recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, DOE must be able to rely on oral communications from officials of DOE contractors concerning significant information. In determining whether to take enforcement action for an oral statement, consideration will be given to such factors as:

(1) The degree of knowledge that the communicator should have had regarding the matter in view of his or her position, training, and experience;

(2) The opportunity and time available prior to the communication to assure the accuracy or completeness of the information;

(3) The degree of intent or negligence, if any, involved;

(4) The formality of the communication;

(5) The reasonableness of DOE reliance on the information;

(6) The importance of the information that was wrong or not provided; and

(7) The reasonableness of the explanation for not providing complete and accurate information.

(c) Absent gross negligence or willfulness, an incomplete or inaccurate oral statement normally will not be subject to enforcement action unless it involves significant information provided by an official of a DOE contractor. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to DOE by an official of a DOE contractor or others on behalf of the DOE contractor, if a record was made of the oral information and provided to the DOE contractor, thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the DOE contractor and was not subsequently corrected in a timely manner.

(d) When a DOE contractor has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether DOE or the DOE contractor identified the problem with the communication, and whether DOE relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the DOE contractor prior to reliance by DOE, or before DOE raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after DOE relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected.

(e) If the initial submission was accurate when made but later turns out to be erroneous because of newly discovered information or advances in technology, a citation normally would not be appropriate if, when the new information became available, the initial submission was promptly corrected.

(f) The failure to correct inaccurate or incomplete information that the DOE contractor does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if a DOE contractor later determines that the initial submission was in error and does not promptly correct it or if there were clear opportunities to identify the error.

XI. Secretarial Notification and Consultation

The Secretary will be provided written notification of all enforcement actions involving proposed civil penalties. The Secretary will be consulted prior to taking action in the following situations:

(a) Any action the Director, or the NNSA Administrator concerning actions involving NNSA contractors, believes warrants the Secretary's involvement; or

(b) Any proposed enforcement action for which the Secretary asks to be consulted.

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Part IV

Department of Housing and Urban Development

24 CFR Part 203
Eligibility of Mortgages on Hawaiian Home Lands Insured Under Section 247; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4779–F–02]

RIN 2502–AH92

Eligibility of Mortgages on Hawaiian Home Lands Insured Under Section 247

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a June 15, 2004, interim rule that amended regulations regarding eligibility for mortgages on Hawaiian home lands to reflect a statutory change to the National Housing Act. The June 15, 2004, interim rule solicited public comments. No comments were received by HUD on the interim rule. This final rule adopts the interim rule, therefore, without change.

DATES: *Effective Date:* February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Office of the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On June 15, 2004 (69 FR 33524), HUD published an interim rule that implemented section 215 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001) (FY2002 HUD Appropriations Act) that amended section 247 of the National Housing Act (12 U.S.C. 1715z–12) relating to single-family insurance on Hawaiian home lands. Section 215 revised the definition of the terms ''Hawaiian home lands'' and ''native Hawaiian.'' Section 215 also changed the eligibility criterion for the receipt of a mortgage insured under section 247 of the National Housing Act.

In accordance with the statutory amendment referenced above, the interim rule made the following regulatory revisions. The interim rule amended 24 CFR 203.43i(c)(2) to conform the regulatory definition of the term ''Hawaiian home lands'' to the revised definition of the term found in section 247(d)(2) of the National Housing Act. The rule also amended 24 CFR 203.43i(c)(3) to conform the definition of the term ''native Hawaiian'' to the revised definition enacted by section 215 of the FY2002 HUD Appropriations Act. Additionally, the interim rule amended 24 CFR 203.43i(i) relating to eligibility requirements and 24 CFR 203.43i(h) by eliminating the requirement for a certification when a leasehold is assumed.

This final rule follows publication of the June 15, 2004, interim rule. As noted above, HUD received no comments on the interim rule. Accordingly, this final rule adopts the interim rule without change.

Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that will have to be complied with by small entities. This rule merely adopts as a final rule the interim rule that conformed the regulatory definition of the terms ''Hawaiian home lands'' and ''native Hawaiian'' and eligibility requirements to the statutory revision. The rule would also facilitate FHA insurance of mortgages on leaseholds held by native Hawaiians. As a result, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

List of Subjects in 24 CFR part 203

Hawaiian Natives, Home improvement, Indian—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, solar energy.

■ Accordingly, the interim rule amending 24 CFR part 203 that was published at 69 FR 33524 on June 15, 2004, is adopted as a final rule without change.

Dated: January 11, 2005.

Sean Cassidy,

General Deputy, Assistant Secretary for Housing.

[FR Doc. 05–1252 Filed 1–25–05; 8:45 am]

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Federal Register

Wednesday,
January 26, 2005

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701 and 774

Transfer, Assignment, or Sale of Permit Rights; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701 and 774

RIN 1029–AC49

Transfer, Assignment, or Sale of Permit Rights

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), propose to revise our rules for, and related to, the transfer, assignment, or sale of permit rights. This proposed rule effectuates a settlement agreement we entered into with the National Mining Association (NMA) in connection with NMA's judicial challenge to certain provisions of our December 19, 2000, final ownership and control rule (2000 ownership and control rule or 2000 rule). In this proposed rule, we propose to: Revise the regulatory definitions of *transfer, assignment, or sale of permit rights* and *successor in interest;* revise the regulatory provisions relating to transfer, assignment, or sale of permit rights; and create separate rules for successors in interest. The primary purpose of the proposed rule is to distinguish clearly the circumstances that will constitute a transfer, assignment, or sale of permit rights (requiring a regulatory authority's approval and, at a minimum, a permit revision) or result in a successor in interest (requiring the issuance of a new permit) from those that will only require a permittee to provide information updates. The proposed rule also affords us an opportunity to ensure our rules are consistent with recent legal developments. This proposed rulemaking does not suspend or withdraw any of the provisions of our 2000 ownership and control rule, nor does it affect any of our proposed revisions to the 2000 rule published on December 29, 2003. This proposed rule is authorized under the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA or the Act).

DATES: *Written comments:* We will accept written comments on the proposed rule until 4:30 p.m., eastern time, on March 28, 2005.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 4:30 p.m., eastern time, on February 16, 2005. If you wish to attend a hearing, but not speak, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held. If you wish to attend and speak at the hearing, you should follow the procedures under ''III. Public Comment Procedures.''

ADDRESSES: You may submit comments, identified by docket number 1029–AC49, by any of the following methods:

- E-mail: *osmregs@osmre.gov.* Include docket number 1029–AC49 in the subject line of the message.
- Mail/Hand Delivery/Courier: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252, 1951 Constitution Avenue, NW., Washington, DC 20240.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Docket: You may review the docket (administrative record) for this rulemaking including comments received in response to this proposed rule at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, located in Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240. The Administrative Record office is opened Monday through Friday, excluding holidays from 8 a.m. to 4 p. m. The telephone number is (202) 208–2847.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* ''III. Public Comment Procedures?'' in the **SUPPLEMENTARY INFORMATION** section of this document.

If you wish to comment on the information collection aspects of this proposed rule, submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via electronic mail, to *OIRA_DOCKET@omb.eop.gov* or via telefacsimile at (202) 395–6566.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.** We will announce the address, date and time for any hearing in the **Federal Register** before the hearing. If you are disabled and require special accommodation to attend a public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, Appalachian Region, Applicant/Violator System Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8424 or (800) 643–9748. E-mail: *ebandy@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background to the Proposed Rule

On December 21, 1998, we published a proposed rule to revise, among other things, our regulatory definition of *successor in interest* and our regulatory provisions for transfer, assignment, or sale of permit rights. *See* 63 FR 70580, 70591, 70601. In the 1998 proposed rule, we did not propose to revise our regulatory definition of *transfer, assignment, or sale of permit rights.* In our 2000 ownership and control rule, 68 FR 75036, which is the final rule based on the 1998 proposal, we explained that, following our analysis of the comments on the proposed revision of the definition of *successor in interest* and the regulatory provisions for transfer, assignment, or sale of permit rights, ''we decided that transfer, assignment, or sale of permit rights and successor in interest issues require further study. As a result, we are not adopting either the proposed changes to those provisions or the proposed revision of the definition of successor in interest.'' 65 FR 79605. With specific reference to the regulatory provisions at 30 CFR 774.17, we explained: ''We are not adopting the proposed revisions to § 774.17. Because of the numerous comments we received on the proposed revisions, we decided to further study issues and considerations regarding the transfer, assignment, or sale of permit rights.'' 65 FR 79642.

After we promulgated the 2000 rule, NMA filed a lawsuit in the U.S. District Court for the District of Columbia, challenging certain provisions of the 2000 rule. *National Mining Association* v. *Office of Surface Mining, et al.*, No. 01–366 (CKK) (D.D.C.). Although we did not adopt the proposed revisions to our transfer, assignment, or sale rules, NMA argued that we reopened the issue for comment and judicial review. In order

to settle this issue, we agreed to publish a proposed rule concerning transfer, assignment, or sale of permit rights for public notice and comment. More specifically, we agreed to: (1) Propose regulatory revisions clarifying the interplay between, and the applicability of, our transfer, assignment, or sale regulations at 30 CFR 774.17 and the permittee information requirements found at 30 CFR 774.12(c); (2) reconsider the provisions of 30 CFR 774.17 that we addressed in the 1998 proposed rule; and (3) reconsider whether a change in majority shareholder of a permittee or operator is a transfer, assignment, or sale of permit rights requiring approval under 30 CFR 774.17.

In addition, until any new transfer, assignment, or sale rules become effective, we agreed to clarify our implementation of our existing rules, in light of legal developments. On September 9, 2004, we issued System Advisory Memorandum # 23 to effectuate this aspect of the settlement and to memorialize our interim clarification. To obtain a paper copy of System Advisory Memorandum # 23, please contact the person identified under **FOR FURTHER INFORMATION CONTACT** or, for an electronic copy, visit the following Internet address: *www.avs.osmre.gov.*

Our decision to propose new transfer, assignment, or sale and related rules is also driven by other developments. In 1988, we defined the phrases *owned or controlled* and *owns or controls* in terms of certain relationships that were deemed or presumed to constitute ownership or control. 53 FR 38868 (October 3, 1988). For example, under paragraph (a)(1) of the definition, permittees and majority shareholders (as well as certain other persons) were ''deemed'' to be owners or controllers, while, under paragraph (b), officers, directors, operators, and certain minority shareholders (as well as certain other persons) were ''presumed'' to be owners or controllers. The rules also provided that the presumptions of ownership or control could be overcome, or rebutted, upon an appropriate showing. Since 1979, we have defined *transfer, assignment, or sale of permit rights,* as it is currently defined, to mean a change in ownership or other effective control over the right to conduct surface coal mining operations. *See* existing 30 CFR 701.5.

Reading the two provisions in conjunction, some regulatory authorities have concluded that a change of a presumed owner or controller, such as an officer or director, resulted in a change in ownership or other effective control and, thus, constituted a transfer, assignment, or sale requiring regulatory approval under 30 CFR 774.17, while others have not.

Then, in the 1998 proposed rule, we proposed to eliminate the presumptions of ownership or control. 63 FR 70580, 70604. Thereafter, on May 29, 1999, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in NMA's challenge to our April 21, 1997 interim final rule (which carried forward the presumptions in the 1988 rule). *National Mining Association.* v. *U.S. Department of the Interior,* 177 F.3d 1 (D.C. Cir. 1999) (NMA v. DOI II). NMA challenged four of our six rebuttable presumptions, which applied when a person: (1) Was an officer or director of an entity (§ 773.5(b)(1)); (2) had the ability to commit the financial or real property assets or working resources of an entity (§ 773.5(b)(3)); (3) was a general partner in a partnership (§ 773.5(b)(4)); or (4) owned 10 through 50 percent of an entity (§ 773.5(b)(5)). The court found two of the challenged ownership or control presumptions—having the ability to control the assets of an entity and being a general partner in a partnership—to be ''well-grounded.'' Id. at 7. However, the court agreed with NMA that OSM cannot presume that officers and directors or 10 through 50 percent shareholders are controllers of mining operations. Id. at 6.

In a June 15, 2000 decision in *Peabody Western Coal Co.* v. *OSM,* No. DV 2000–1–PR, the Department of the Interior's Office of Hearings and Appeals had occasion to examine the impact of *NMA* v. *DOI II* on transfer, assignment, or sale issues. In *Peabody Western,* OSM determined that Peabody Western's change of all of its corporate officers and directors constituted a transfer, assignment, or sale of permit rights under 30 CFR 701.5. The administrative law judge disagreed, explaining that, after *NMA* v. *DOI II,* OSM cannot presume that an officer or director is a controller and, therefore, a change of an officer or director, or even a change of all officers and directors, cannot, standing alone, automatically constitute a change of ''effective control'' triggering a transfer, assignment, or sale of permit rights. The administrative law judge also made some other observations that we assigned particular weight in developing this proposed rule. The judge noted that the ''other effective control'' language is ''vague and imprecise'' and ''discloses no meaningful standard and provides no advance notice to a regulated corporate entity'' as to which corporate changes will constitute a transfer, assignment, or sale. This defect, according to the judge, does not provide ''adequate advance notice of the purported regulatory standard'' and leaves permittees ''to speculate'' as to when regulatory approval is required.

In the 2000 rule, we adopted the proposal to eliminate presumptions of control (*see* 65 FR 79600), adopted separate definitions of ''*own, owner,* or *ownership*'' and ''*control* or *controller*'' (*see* 30 CFR 701.5), and added specific requirements for permittees to update their ownership and control and related information upon any change of that information, including the change of an officer, director, or minority shareholder (*see* 30 CFR 774.12(c)). However, as explained above, we did not revise our definition of *transfer, assignment, or sale of permit rights* (*see* 30 CFR 701.5), which still includes the ''other effective control'' language, or the corresponding regulatory requirements. Thus, the existing rule continues to suffer the same flaws identified in *Peabody Western.* Also, the information update requirement at 30 CFR 774.12(c) created some confusion as to whether we had formally decided that a change in an officer, director, minority shareholder, or certain other persons, did *not* constitute a transfer, assignment, or sale of permit rights, but rather required only an information update. We were silent on this point in the preamble to the 2000 rule.

In sum, our settlement with NMA and other developments have caused us to reevaluate and propose revisions to our rules relating to the transfer, assignment, or sale of permit rights. In issuing today's proposed rule, our overarching objective is to provide greater clarity for both regulatory authorities and the regulated community by creating, to the extent possible, ''bright line,'' objective standards as to which circumstances will trigger a transfer, assignment, or sale of permit rights, or give rise to a successor in interest, requiring regulatory approval and/or a new permit. We also seek to clarify which changes will require only an information update under 30 CFR 774.12(c).

II. Discussion of the Proposed Rule

In this section, we discuss our proposed revisions to certain sections of the Code of Federal Regulations (CFR). While the range of regulatory concepts discussed in this proposed rulemaking includes other concepts in our rules, such as ownership, control, permit eligibility, and permittee information requirements, we are only proposing to

revise our regulatory definitions of *transfer, assignment, or sale of permit rights* and *successor in interest,* as well as our rules for transfer, assignment, or sale of permit rights. Directly related to these proposed revisions, we also propose to create new rules for successors in interest.

The regulatory revisions we propose today are based upon our review, deliberations, and reconsideration of issues relating to the transfer, assignment, or sale of permit rights and successors in interest. We analyzed the relevant statutory provisions, including the limited legislative history of those provisions, researched relevant legal decisions, the use of the term ''successor in interest'' in other regulatory and legal contexts, and previous objections to the current rules, and relied on our considerable expertise and experience in handling transfer, assignment, or sale issues over the years. In addition, we reconsidered the relevant portions of our 1998 proposed rule as well as the relevant portions of the subsequent 2000 final rule. In short, we believe our proposal is consistent with SMCRA's statutory provisions and relevant legal precedents. We also believe this proposal, if adopted, would meet our objective of creating ''bright line,'' objective standards for this aspect of our regulatory program. We invite comments on both of these issues.

Following are discussions of our specific proposed changes to the definitions at 30 CFR 701.5 and the rules at 30 CFR 774.17, our proposed creation of new 30 CFR 774.18, and other ministerial changes required as a result of this proposed rulemaking.

A. Section 701.5—Definition: Successor in Interest

We propose to revise the regulatory definition of *successor in interest* at 30 CFR 701.5. The current definition of *successor in interest* states: ''*Successor in interest* means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of permit rights.'' We propose to revise the definition to read: ''*Successor in interest* means a person who follows a permittee, by statutory succession, operation of law, or as a result of a similar, non-substantive change in form, in ownership over the right to conduct surface coal mining operations granted under a permit. Successors in interest will result from a non-commercial, non-substantive event, such as a business name change or an inheritance.'' As explained in more detail below, the proposed revision separates the concepts of ''successor in interest'' and ''transfer, assignment, or sale of permit rights.'' Most importantly, the proposal also removes the subjective concept of control (or ''effective control'') from the definition of *successor in interest,* but retains the more objective standard of ''ownership,'' as we defined that term in the 2000 rule.

The starting point of our analysis was the recognition that our current rules merge the concepts of ''successor in interest'' and ''transfer, assignment, or sale of permit rights.'' That is, under our current rules, a successor in interest arises as a result of a transfer, assignment, or sale. Upon further reflection and analysis, we determined that the Act, in sections 506(b) (successor in interest) and 511(b) (transfer, assignment, or sale of permit rights), appears to treat these concepts differently and separately. Thus, we are proposing to separate the concept of successor in interest from the concept of transfer, assignment, or sale of permit rights.

In pertinent part, section 506(b) of SMCRA provides that

> A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

We believe our proposal to separate the concepts of successor in interest and transfer, assignment, or sale finds support in the Act itself and in its legislative history. First, and most obviously, the concepts are discussed in different sections of the Act: The successor in interest provisions are found under section 506, while the provisions for transfer, assignment, or sale of permit rights are found under section 511. The mere fact that the provisions are in different sections suggests that Congress intended them to have different meanings. This reading of the Act is also supported by the limited legislative history. An unenacted version of SMCRA provided that

> All permits issued pursuant to the requirements of this Act shall be issued for a term not to exceed five years and shall be nontransferable: *Provided,* That a successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

S.7, 95th Congress, 1st Session, Senate Report No. 95–128 (May 10, 1977).

Thus, this version of the Act that existed just prior to enactment expressly disallowed transfers, but provided that successors in interest who applied for new permits could continue operations under the existing permit until a permitting decision was made. This language suggests a distinction between transfers and situations giving rise to a successor in interest. As enacted, SMCRA section 511(b) allows for the transfer, assignment, or sale of permit rights with regulatory approval. Thus, although Congress ultimately allowed for transfers, it retained separate language providing for successors in interest.

We submit that this same legislative history indicates that Congress intended for more relaxed regulatory requirements for successors in interest. For example, under the specified circumstances, successors in interest are expressly allowed to continue mining under the existing permit, while there is no such express provision for transferees, assignees, and purchasers. The relaxed regulatory scrutiny for a ''successor in interest'' comports with our understanding that a successor in interest results when the permittee undergoes a change in form only. By contrast, a transfer, assignment, or sale results in a substantive change in the party exercising rights under the permit. It makes sense, in our view, that Congress would provide for less regulatory scrutiny when there is only a change in form.

Our conclusion that a successor in interest scenario involves a non-substantive change in form is based on our research of State and Federal definitions of the term and rules applying the term ''successor in interest''; State and Federal case law where the term ''successor in interest'' was relevant to the subject matter of the case; and the traditional legal definition of ''successor in interest.'' In our research, we found that ''successor in interest'' is consistently used to describe a non-substantive, statutory event. That is to say, we have found that a successor in interest is the result of an operation of law or other non-commercial event, in the sense that the successor does not acquire an ownership interest in exchange for goods, services, or monetary or other consideration. The two most often cited events that result in a successor in interest are: (1) Inheritance, upon the death of another person, and (2) a change of the name of an entity—such as through a corporate reorganization—where all other legal rights and obligations are unchanged. Indeed, the case law we examined consistently found a successor in

interest to be a business entity that evolves from a previous entity where, apparently, all other legal attributes of the successor entity remained the same. In addition, *Black's Law Dictionary* (6th ed. 1990) explains:

> In order to be a ''successor in interest,'' a party must continue to retain the same rights as original owner without change in ownership and *there must be change in form only and not in substance*, and transferee is not a ''successor in interest.'' In cases of corporations, the term ordinarily indicates statutory succession as, for instance, when corporation changes its name but retains same property.

(Emphasis added.) *See also Holland* v. *Williams Mt. Coal Co.,* 256 F.3d 819, 821–22 (D.C. Cir. 2001) (referring to the *Black's* definition as the ''standard corporate law definition''). In *Holland,* the U.S. Court of Appeals for the District of Columbia Circuit also explained that ''[a] party simply acquiring property of a firm in an arm's length transaction, and taking up its business activity, does not become the selling firm's ''successor in interest.'' *Id.* at 822. Thus, under the generally accepted legal definition of ''successor in interest,'' it appears that a change of ownership is considered non-substantive when the new owner retains the same rights as the original owner and the new owner continues to hold the same ownership interests as the original owner. *See, e.g., Holland,* 256 F.3d at 822 (a successor in interest ''is a successor to the *wealth* of the predecessor, typically through a corporate reorganization'') (emphasis in original). With the exception of labor and employment law, in no instance in our research did we find a successor in interest in the context of a commercial transaction resulting in a change of ownership in exchange for goods, services, or monetary or other consideration. Rather, the legal definition and other applications of the term suggest events that seemingly exclude commercial transactions.

Under SMCRA, a successor in interest appears to be subject to the same requirements as any other applicant for a new permit. However, a successor in interest would have an expectation of privilege not accorded to other applicants for a new permit because the Act explicitly allows mining to continue under the existing mining and reclamation plan while the successor's application is under review. This expectation of privilege or minimal regulatory scrutiny only occurs when there is a change in form only—as in the successor in interest scenario—when the circumstances do not require further review. We feel this interpretation and application of ''successor in interest'' is consistent with the State and other Federal uses that we examined. While a successor in interest has an expectation to continue the surface coal mining operation under the existing permit, the successor must also apply for a new permit because the preceding person who held the permit no longer exists, whether that ''person'' was a natural person or a business entity.

A transfer, assignment, or sale of permit rights under section 511(c) of SMCRA, by contrast, appears to differ substantially from the successor in interest scenario in that a transfer, assignment, or sale represents a substantive change in the permittee or operator that would require regulatory approval and a new permit or a permit revision, presumably before mining can commence or resume. Thus, a transferee, assignee, or purchaser does not have the same expectation of privilege as a successor in interest. Also, because there is a substantive change in the permittee or operator, the conditions under which the substantively different party should be allowed to mine may be materially different than the conditions for the previous permittee. Arguably, continued mining under the existing permit is not appropriate and, at a minimum, the existing permit should be revised to reflect the change in circumstances before mining is resumed.

In the case of a transfer or sale of a permit to a new entity, the new entity generally will be seeking regulatory approval to assume the title of permittee. In contrast, in the case of a transfer or sale of an entity holding a permit, the name of the permittee may not change but the principle owner of the permittee may change. The situation is somewhat different for an assignment under 511(b) of SMCRA. We are proposing that a rational view of an assignment is a change in the designated operator, when other than the permittee. In such cases, the permittee stays the same but the approved mining entity changes through the authorized assignment of permit rights to a designated operator. We believe that in all these cases, the regulatory authority must determine if the entity that would be authorized to mine as a result of the transfer, assignment or sale of permit rights is eligible to conduct mining and reclamation operations. Thus, entities seeking to exercise permit rights acquired through transfer, assignment, or sale do not have the same expectation of privilege as a successor in interest.

In sum, as a result of our research, we propose that defining *successor in interest* as an independent concept, and not in the context of a transfer, assignment, or sale of permit rights, represents a more accurate and desirable implementation of the ''successor in interest'' concept embodied in section 506(b) of the Act. We are also proposing that the key conceptual differences between a successor in interest and transfer, assignment, or sale of permit rights are that a successor in interest: (1) Occurs as the result of an operation of law or other non-commercial event and involves a non-substantive change in form, (2) has an expectation of privilege to continue mining operations under the existing permit not present in a transfer, assignment, or sale of permit rights, and (3) must apply for a new permit and not for a permit revision. These differences create a ''bright line'' distinction between entities who become successors in interest and entities that seek validation of permit rights acquired by way of a transfer, assignment, or sale.

One other important aspect of our proposed definition of successor in interest bears mention. We propose to remove the subjective concept of control—or ''effective control''—from the definition; at the same time, we propose to retain the more objective concept of ''ownership'' in the definition. (Although the current definition does not contain the words ownership or control, the concepts of ownership and control are effectively incorporated into the definition by reference to the definition of transfer, assignment, or sale of permit rights, which contains the terms ''ownership'' and ''effective control.'') Retention of the ownership concept is appropriate, in our view, because a successor in interest scenario involves a change in ownership, even though the change is technical or non-substantive. In the 2000 rule, we defined *own, owner,* or *ownership* to mean ''being a sole proprietor or possessing or controlling in excess of 50 percent of the voting securities or other instruments of ownership of an entity.'' *See* 30 CFR 701.5. (On December 29, 2003, we proposed a non-substantive revision to this definition. 68 FR 75038. Our proposed revision remains pending. If adopted, the proposed revision would not affect today's proposed rule.) Thus, under this proposal, a successor in interest would result when there has been a non-substantive change in ownership of greater than 50 percent of a permittee. By way of example, under this proposal, if a corporate permittee undergoes a reorganization (for example changing its legal status from a C corporation to a limited-liability company), resulting in a name change but retention of the same ownership

interests, the new entity would be a successor in interest and would be subject to the regulatory requirements discussed below under proposed new section 774.18. Also, if a person inherits an ownership interest in a permittee of greater than 50 percent, the person would be a successor in interest to the permittee. A corollary to this proposal is that a change in ownership of 50 percent or less of the permittee or a change in control, standing alone, would never result in a successor in interest (or, as explained below, a transfer, assignment or sale) and, thus, would only require, at most, an information update under 30 CFR 774.12(c). Thus, if adopted, this aspect of the proposed rule would achieve the twin goals of providing a ''bright line,'' objective standard as to which circumstances will give rise to a successor in interest and which changes will require only an information update under 30 CFR 774.12(c). We invite comment on the statutory rationale provided above for the proposed changes to the definition of *successor in interest.* We also invite comment on whether, after applying the current definition for 25 years, there are practical reasons warranting or arguing against these changes.

B. Section 701.5—Definition: Transfer, Assignment, or Sale of Permit Rights

We propose to revise the regulatory definition of *transfer, assignment, or sale of permit rights.* The current definition of *transfer, assignment, or sale of permit rights* is as follows: ''*Transfer, assignment, or sale of permit rights* means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority.'' We propose to revise the definition to read: ''*Transfer, assignment, or sale of permit rights* means a commercial transaction resulting in a change in ownership over the right to conduct surface coal mining operations granted under a permit or a change in operator. A transfer, assignment, or sale of permit rights involves a substantive change and not a mere change in form.'' As with our proposed definition of *successor in interest,* the most significant aspect of our proposed revision to the definition of *transfer, assignment, or sale of permit rights* is the proposed removal of the subjective concept of control (or ''effective control'') from the definition. Again, as with the definition of *successor in interest,* we also retained the more objective standard of ''ownership.'' The proposal would, to the extent possible, establish an objective standard that can be readily understood by both regulatory authorities and the regulated community.

As discussed above, to clearly distinguish a transfer, assignment, or sale from a successor in interest scenario, we also propose that a transfer, assignment, or sale always involves a ''commercial transaction'' and a ''substantive change'' in ownership of a permittee, and not, as in the case of a successor in interest, a mere change in form. As previously explained, we propose that a successor in interest scenario, unlike a transfer, assignment, or sale, occurs as the result of an operation of law or other non-commercial event and involves a non-substantive change in form. In this proposal, we use the terms ''transfer'' and ''sale'' interchangeably. While there are technical differences between the terms—such as the fact that a sale involves monetary consideration while a transfer may not—the differences are of no practical consequence under this proposal because all substantive changes of ownership—whether accomplished by sale or transfer—would be subject to the same regulatory requirements. When we refer to a ''commercial transaction,'' we mean acquisition of an ownership interest in exchange for goods, services, or monetary or other consideration. By ''substantive change,'' we mean that the new owner does not retain the same rights and legal attributes as the original owner and does not succeed to the wealth of the original owner. We derive this understanding of the term ''substantive change'' from the definition of the term ''successor in interest.'' As previously discussed, the caselaw interpreting the term ''successor in interest'' makes clear that an entity acquiring an ownership interest in another entity by way of a sale or transfer is not a successor in interest because sales and transfers involve substantive changes in ownership.

Throughout our deliberations, we were mindful of *Peabody Western's* admonition that our existing definition, to the extent it relies on the concept of ''effective control,'' is ''vague and imprecise'' and ''discloses no meaningful standard and provides no advance notice to a regulated corporate entity'' as to which corporate changes will constitute a transfer, assignment, or sale. We determined that it was the inclusion of the phrase ''or other effective control'' that created the imprecision in the current definition. The concept of control is embodied in section 510(c) of the Act. Under that section, an applicant is not eligible to receive a permit if it owns or controls an operation with an outstanding violation. Our existing definition of *transfer, assignment, or sale of permit rights* imports the control concept from section 510(c), but nothing in the Act compels that approach. However, we believe that a substantive change in majority ownership, which almost always involves a change of control, remains a sufficient indicator of a transfer or sale. As such, we propose to remove the concept of ''effective control'' from the definition of *transfer, assignment, or sale of permit* rights, while expressly retaining the ownership criterion.

Under this proposal, both direct transfer and sale of a permit to a new entity and a transfer or sale of an entity holding permit rights would trigger the regulatory requirements associated with transfer, assignment, or sale of permit rights. In the first scenario, involving transfer or sale of a permit to a new entity, the new entity would have to seek regulatory approval to become the new permittee, and the regulatory authority would have to determine whether the new entity is eligible to receive a permit. In the second scenario, involving a transfer or sale of an entity holding permit rights, the permittee would remain the same, and the regulatory authority would have to determine whether the existing permittee remains eligible to conduct surface coal mining operations. While we cannot address every hypothetical transaction in this preamble, the following examples outline our general understanding of the types of transactions that would constitute transfers or sales of permit rights under this proposal.

Example 1: Company A holds a SMCRA mining permit. Company B, through a commercial transaction involving an exchange of consideration, acquires greater than 50 percent of the stock or other ownership instruments of Company A. This transaction will be considered a transfer or sale under the definition we propose today. If Company A wishes to remain the permitee, A would have to, at a minimum, apply for a permit revision under section 774.17, discussed below. The regulatory authority would then have to determine whether A (not B) remains eligible for a permit under SMCRA and its implementing regulations. If Company B wishes to become the new permittee, B would become the subject of the permit eligibility determination. On the other hand, if Company B acquires 50 percent or less of Company A, there would not be a transfer or sale under the proposed definition. However, the existing permittee, A, would have to inform the regulatory authority of this transaction, by way of an information update, under 30 CFR 774.12(c).

Example 2: Parent Company A has a wholly-owned subsidiary, S, which holds a SMCRA mining permit. Company A, through a commercial transaction involving an exchange of consideration, sells or transfers greater than 50 percent of the stock or other ownership instruments in S to a new company, B. This transaction will be considered a transfer or sale under the definition we propose today. If S wishes to remain the permitee, S would have to, at a minimum, apply for a permit revision under section 774.17, discussed below. The regulatory authority would then have to determine whether S (not B) remains eligible for a permit under SMCRA and its implementing regulations. If Company B wishes to become the new permittee, B would become the subject of the permit eligibility determination. On the other hand, if Company B acquires 50 percent or less of S, there would not be a transfer or sale under the proposed definition. However, the existing permittee, S, would have to inform the regulatory authority of this transaction, by way of an information update, under 30 CFR 774.12(c).

Example 3: Company A holds a SMCRA mining permit, but wishes to leave the mining business. Company B acquires all of Company A's assets, including the mining permit. This transaction, which involves the direct sale or transfer of a mining permit, would constitute a transfer or sale requiring regulatory approval. Under section 774.17, discussed below, Company B, as the new mining entity, would have to apply to become the new permittee and would, thus, be the subject of the regulatory authority's permit eligibility determination. As explained below, although Company B purportedly acquired Company A's mining permit, Company B does not have the right to mine under the permit without regulatory approval.

Example 4: Company A, which holds a SMCRA mining permit, merges with Company B. Under the terms of the merger, B acquires a greater than 50 percent ownership interest in A. This transaction would constitute a transfer or sale under the proposed definition. If Company A is the surviving corporation and wishes to remain the permitee, A would have to, at a minimum, apply for a permit revision under section 774.17, discussed below. The regulatory authority would then have to determine whether A (not B) remains eligible for a permit under SMCRA and its implementing regulations. On the other hand, if Company B is the surviving company, Company B would have to seek regulatory approval to become the new permittee and would, thus, become the subject of the permit eligibility determination. If, through the merger, Company B acquires 50 percent or less of Company A, there would not be a transfer or sale under the proposed definition. However, the existing permittee, A, would have to inform the regulatory authority of this transaction, by way of an information update, under 30 CFR 774.12(c).

Example 5: Company A, which holds a SMCRA permit, is experiencing financial difficulties and becomes involved, either voluntarily or involuntarily, in Chapter 7 bankruptcy proceedings. The bankruptcy trustee liquidates Company A's assets and sells the mining equipment and mining permit to Company B. This transaction, which involves the direct sale or transfer of a mining permit, would constitute a transfer or sale requiring regulatory approval. Under section 774.17, discussed below, Company B, as the new mining entity, would have to apply to become the new permittee and would, thus, be the subject of the regulatory authority's permit eligibility determination. As explained below, although Company B purportedly acquired Company A's mining permit, Company B does not have the right to mine under the permit without regulatory approval. If Company A is going through a Chapter 11 bankruptcy reorganization, Company A will typically continue to operate its business as a ''debtor in possession.'' This scenario, which typically will not involve a substantive change in ownership of Company A, generally will not constitute a transfer or sale under the proposed definition. However, as in the non-bankruptcy setting, if a new entity does acquire a greater than 50 percent ownership interest in A, the transaction would constitute a transfer, assignment, or sale requiring regulatory approval.

We expressly invite comment on our proposed approach to these issues, including whether both direct transfer or sale of a permit and transfer or sale of an entity holding permit rights should constitute a transfer, assignment, or sale of permit rights requiring regulatory approval.

The Act, at section 507(b)(1), requires a permit applicant to identify the operator, if different from the applicant. In our experience, the best, and perhaps only, example of an assignment of permit rights, in the SMCRA context, is a change in the designated operator. While a change in the designated operator shares with a transfer and a sale the common feature of a substantive commercial transaction, a change of operator does not involve a change in the permittee, who still retains the obligations associated with the approved permit. Rather, the permittee stays the same and only the mining entity changes. Because ''assignment'' of permit rights is included in section 511(b), and section 507(b)(1) requires identification of the operator if different from the applicant, a change of the designated operator appears significant enough to expressly require regulatory approval under section 511(b), even though it does not necessarily involve a change of ownership. Therefore, we propose expressly to clarify that a change in operator constitutes an assignment and triggers the regulatory requirements associated with transfer, assignment, or sale of permit rights. Under this proposal, when there is a change of the designated operator, the regulatory authority would have to determine whether the new operator is eligible to conduct surface coal mining operations under the Act and its implementing regulations. We are proposing this clarification because, under current rules, some regulatory authorities have considered a change in operator as subject to transfer, assignment, or sale provisions, while others have not. We expressly invite comment on this clarification.

As previously mentioned, in our settlement with NMA, we agreed to reconsider whether a change in majority shareholder of a permittee or operator is a transfer, assignment, or sale of permit rights requiring approval under 30 CFR 774.17. We have reconsidered the issue and, for the reasons explained above, have decided to incorporate the concept of majority ownership—through cross-reference to our definition of ownership at 30 CFR 701.5—in our proposed definitions of *successor in interest* and *transfer, assignment, or sale of permit rights.* Thus, based on our reconsideration of the issue, we have concluded that a non-substantive change in majority ownership always gives rise to a successor in interest (requiring a new permit) and a substantive change in majority ownership always constitutes a transfer, assignment, or sale (requiring, at a minimum, a permit revision). We specifically invite comments on this approach.

In the settlement with NMA, we also agreed to clarify the interplay between our transfer, assignment, or sale regulations and the permittee information update requirements found at 30 CFR 774.12(c), which references 30 CFR 778.11(c) and (d). Under today's proposal, as explained, a change of majority ownership would always result in a successor in interest or transfer, assignment, or sale of permit rights. As such, any change in ownership of 50 percent or less or a change in control, standing alone, would never result in a successor in interest or a transfer, assignment or sale and, thus, would only require, at most, an information update under 30 CFR 774.12(c). While a change in majority ownership would require an information update under existing section 774.12(c) (based on the cross-reference to section 778.11(c)), we have separately proposed changes to section 778.11(c). *See* 68 FR 75047. Therefore, we have not included specific proposed changes to section 774.12(c) at this time because of the possible changes to the sections it references. However, it is our intent to include, as part of any final rule,

changes to section 774.12(c) that would provide an objective ''bright line'' between its permit information update requirements and those changes subject to sections 774.17 or proposed 774.18.

C. Revised Heading for 30 CFR Part 774

As a result of proposing to create a new section in 30 CFR part 774 pertaining to successors in interest, we also propose to revise the heading for 30 CFR part 774 by inserting the term ''successor in interest.'' The revised heading would read: ''Revision; Renewal; Transfer, Assignment, or Sale of Permit Rights; Successor in Interest; Post Permit Issuance Requirements; and Other Actions Based on Ownership, Control, and Violation Information.''

D. Section 774.1—Scope and Purpose

Also as a result of proposing to create new regulatory provisions for successors in interest in 30 CFR part 774, we propose to revise the current scope and purpose at 30 CFR 774.1 by inserting the term ''successor in interest.'' It will then read as follows: ''This part provides requirements for revision; renewal; transfer, assignment, or sale of permit rights; successor in interest; entering and updating information in AVS following the issuance of a permit; post-permit issuance requirements for regulatory authorities and permittees; and other actions based on ownership, control, and violation information.''

E. Section 774.17—Transfer, Assignment, or Sale of Permit Rights

Section 511(b) of SMCRA states: ''No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority.'' 30 U.S.C. 1261(b). Our regulations implementing this statutory provision are currently found at 30 CFR 774.17; the definition of *transfer, assignment, or sale of permit rights* is found at 30 CFR 701.5.

As we agreed in our settlement with NMA, we have examined and reconsidered all aspects of our existing regulations for the transfer, assignment, or sale of permit rights as well as all the aspects of 30 CFR 774.17 that we addressed in our 1998 proposed rule. As a result, along with proposing to revise the definition of *transfer, assignment, or sale of permit rights,* we are also proposing to revise each portion of our rules establishing the regulatory requirements for transfers, assignments, or sales of permit rights. Below, we discuss each proposed revision by paragraph.

30 CFR 774.17(a)

Existing paragraph 774.17(a) provides that no transfer, assignment, or sale of rights granted by a permit shall be made without the regulatory authority's prior written approval. This provision has been construed by some as an attempt to require regulatory authority approval of private business transactions. We propose to revise this provision to make clear that the regulatory authority has no involvement in private business transactions. However, in doing so, we also stress that, under this proposal, a person's acquisition of a permit or an entity holding rights granted under a permit does not mean that the purchaser has acquired the right to mine. We continue to believe that only the regulatory authority can validate permit rights upon transfer, assignment, or sale and that, in validating such permit rights, the regulatory authority must determine if the entity that proposes to mine as a result of the private transaction is eligible to conduct surface coal mining operations under the Act and its implementing regulations. Stated differently, only upon validation by the regulatory authority can it be said that the acquiring entity has permit rights. Thus, our proposal not only retains the concept that a regulatory authority must give written approval of a transfer, assignment, or sale, but that such approval must be granted before mining operations can commence.

Although section 511(b) of the Act does not include the word ''prior,'' we continue to believe a requirement of prior regulatory approval can reasonably be inferred from the statutory language. The requirement for a regulatory authority's prior approval before mining operations can commence also comports with our conclusion that a transferee, assignee, or purchaser has no expectation of privilege to continue mining under an existing permit. Thus, these proposed revisions retain the requirement for prior approval before mining by the transferee, new assignee, or purchaser resumes or commences, while clarifying that we are not attempting to regulate private commercial transactions. We invite comment upon this approach and our rationale for it. We also invite comment on whether, after over 20 years under the current rules, these changes are needed or warranted.

30 CFR 774.17(b)

Paragraph (b) sets forth the proposed application requirements for a permit revision allowing a transferee, assignee, or purchaser of permit rights to conduct surface coal mining operations.

In paragraph (b)(1)(i), we propose that the applicant identify the telephone number of the existing permittee in the application. We believe this information is beneficial to the regulatory authority during its review of the application. In this same paragraph, the existing provision requires the applicant to provide the existing permit number or ''other identifier.'' Because no other identifier is as unique to a transfer, assignment, or sale of permit rights as the permit number itself, we propose to remove the ''other identifier'' language.

Proposed paragraph (b)(1)(ii) would require a description of the transfer, assignment, or sale. Whereas the current provision requires a ''brief description,'' we propose to remove the modifier ''brief'' as too limiting. We do not intend for the description to be exceedingly lengthy, but it should provide sufficient information concerning the transaction for the regulatory authority to understand the nature of the commercial transaction affecting rights granted under the permit.

Proposed paragraph (b)(1)(iv) would be a new provision. We propose that the application under section 774.17 must include any proposed changes to the existing mining and/or reclamation plan. We believe that it is important for the regulatory authority to review the applicant's anticipated changes in the mining and/or reclamation plan at the same time the regulatory authority is determining whether the applicant is eligible for a permit. However, by this proposal, we do not intend to limit the right of an approved applicant to later seek revision of an approved permit.

Current paragraph (b)(2) requires the applicant to advertise the filing of the application, including the requirement to identify the name and address of the permittee. We propose to add the modifier ''existing'' to the word ''permittee.'' ''Existing permittee'' means the permittee that transferred, assigned, or sold the permit rights. Significantly, we also propose that no advertisement is required for an assignment or when there is only a change in operator. We note that the existing requirement for public notice is less extensive than that required for significant revisions, which, under our rules, are subject to the full public notice requirements applicable to new permit applications. *See* 30 CFR 773.6. We propose to retain the substance of existing paragraph (b)(2) for transfers and sales. However, we do not believe that an assignment of permit rights to a designated operator is significant enough to require public notice and comment. An assignment of permit rights involves only a conveyance of the

permittee's right to mine, without affecting his obligation for full compliance under the permit. Therefore, we believe that advertising and public comment are not necessary for an assignment of permit rights to a designated operator.

30 CFR 774.17(c)

Proposed paragraph (c), which addresses public participation requirements, would remain substantively similar to the existing provisions. However, as with the advertising provision proposed at paragraph (b)(2), we do not believe an assignment of rights granted under a permit or a change in operator is significant enough to require public participation.

30 CFR 774.17(d)

Proposed paragraph 774.17(d) sets forth the criteria for approval of a permit application submitted under 30 CFR 774.17. The proposed provisions are substantively similar to the existing rules. We propose to revise the performance bond provision in paragraph (d)(2) to clarify that an applicant must submit proof of a sufficient performance bond or other guarantee. We propose removing that portion of the current provision that indicates an applicant can obtain the bond coverage of the original permittee because it is unnecessary and included within the concept of submitting proof of sufficient bond.

We propose to add new paragraph (d)(3), which requires regulatory authority approval of any proposed changes to the existing permittee's approved mine and/or reclamation plan. This proposed change corresponds to the proposed addition of new paragraph (b)(1)(iv), discussed above. In our view, any proposed change to the mining and reclamation plans should be approved as part of this process. Nonetheless, we recognize that the permittee may apply for a revision of an approved permit at any time.

30 CFR 774.17(e)

We propose to revise current paragraph (e), which contains provisions for notification of the regulatory authority's permitting decision. Proposed paragraph (e)(1) is substantively similar to existing paragraph (e). We propose to eliminate existing paragraph (e)(2), which is predicated on the idea that the applicant is seeking approval of a private business transaction; in its place, we propose to add a new provision that would require the regulatory authority to update the application, permit, and other relevant records in the Applicant/Violator System (AVS) (*see* definition at 30 CFR 701.5) once a permitting decision under these procedures has been made. We believe that keeping the information in AVS accurate and current remains critical to the effective and efficient operation of the computer system.

30 CFR 774.17(f)

Proposed paragraph 774.17(f) is substantively similar to the existing paragraph. The only noteworthy change would be removal of the term ''successor in interest'' to emphasize that 30 CFR 774.17, as revised, would no longer apply to successors in interest. Instead, the proposed revision would focus on ''any new permittee approved to commence surface coal mining operations under this section.''

F. Section 774.18—Successor in Interest

Section 506(b) of SMCRA states, in pertinent part:

> A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

30 U.S.C. 1256(b). Previously, as under our existing rules, we have commingled the concepts of ''successor in interest'' and ''transfer, assignment, or sale.'' Thus, *successor in interest* is currently defined to mean a person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights. Due to this merger of concepts, we have never promulgated separate regulatory provisions pertaining exclusively to successors in interest, as distinct from transferees, assignees, and purchasers. As explained previously in this preamble, we now propose to give separate regulatory effect to section 506(b)'s ''successor in interest'' provisions at proposed new 30 CFR 774.18. Our reasons for proposing to separate the successor in interest provisions from the transfer, assignment, or sale provisions are explained elsewhere in this preamble. The most significant aspect of these proposed provisions is that a successor in interest may, under certain specified circumstances, continue to mine under the existing permit while the regulatory authority processes the successor in interest's new permit application. Below, we discuss each proposed provision by paragraph.

30 CFR 774.18(a)

We propose to add new paragraph 774.18(a), which would establish application requirements for successors in interest. Consistent with SMCRA section 506(b), proposed paragraph (a)(1) would provide that a successor in interest must apply for a new permit within 30 days of succeeding to the rights granted under an existing permit. Proposed paragraph (a)(2) would require a successor in interest to obtain performance bond coverage in an amount sufficient to cover the operations proposed in the permit application and provide proof of such coverage to the regulatory authority. Proposed paragraph (a)(3) requires the successor in interest to meet any other requirements specified by the regulatory authority. Proposed paragraph (a)(3) is consistent with provisions in our other permitting rules and is also consistent with our belief that a regulatory authority should retain some discretion to specify additional requirements based on the case-specific circumstances of a particular permit application.

30 CFR 774.18(b)

At paragraph (b), we propose to give effect to SMCRA section 506(b)'s provision for successors in interest to continue mining under the existing permit. Consistent with section 506(b), we propose that a successor in interest who applies for a new permit within 30 days, and who is able to obtain the bond coverage of the original permittee, or equivalent bond coverage, may continue uninterrupted surface coal mining and reclamation operations under the existing permit. This provision comports with the statutory text of section 506(b) and the legislative history supporting that section. Although the Act specifies that the successor in interest must obtain the bond coverage of the original permittee, we believe that it is consistent with the Act to allow the successor in interest to obtain new bond coverage equivalent to the original permittee's coverage.

III. Public Comment Procedures

Electronic or Written Comments: If you submit written comments, they should be specific, confined to issues pertinent to the proposed rule, and explain the reason for any recommended change(s). We appreciate any and all comments, but the most useful and likely to influence decisions on a final rule will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its impending regulations, case law, other pertinent

State or Federal laws or regulations, technical literature, or other relevant publications.

Except for comments provided in an electronic format, you should submit three copies of your comments if practical. We will not consider anonymous comments. Comments received after the close of the comment period (*see* **DATES**) or at locations other than those listed above (*see* **ADDRESSES**) will not be considered or included in the Administrative Record.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (*see* **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record. We will honor this request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, to the extent allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment and submit your comment by regular mail, not electronically. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public hearings: We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating in a hearing should inform Mr. Earl Bandy (*see* **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 4:30 p.m., eastern time, on February 16, 2005. If no one has contacted Mr. Bandy to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony.

Public meeting: If there is only limited interest in a hearing at a particular location, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with us to discuss the proposed rule may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All meetings will be open to the public and, if possible, notice of the meetings will be posted at the appropriate locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the administrative record of this rulemaking.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

The proposed rule is considered a significant rule and is subject to review by the Office of Management and Budget under Executive Order 12866.

a. The proposed rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed revisions to the regulations implementing SMCRA sections 506(b) and 511(b) will not have an adverse economic impact on the coal industry or State regulatory authorities. The anticipated expenses for the coal industry and the States under the proposed creation of separate provisions for successors in interest are not significant, given that these costs previously have been a subset of costs projected for the coal industry and States under the provisions for transfer, assignment, or sale of permit rights. Therefore, any change in the estimated costs would be relatively small. None of the changes significantly alter the fundamental framework of our regulatory program.

b. The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The proposed rule would not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. The proposed rule may raise novel legal or policy issues which is why it is considered significant.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As previously stated, the proposed revisions to the regulations implementing sections 506(b) and 511(b) of SMCRA would not have an adverse economic impact on the coal industry or State regulatory authorities. In addition, the proposed rule would produce no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act of 1995

For the reasons previously stated, this proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement concerning information required under the Unfunded Mandates Reform Act (2 U.S.C. 1531) is not required.

Executive Order 12630—Takings

This proposed rule does not have any significant takings implications under Executive Order 12630. Therefore, a takings implication assessment is not required.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

For the reasons discussed above, this proposed rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this proposed rule on Federally recognized Indian tribes. We have determined that the proposed rule would not have substantial direct effects on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not considered a significant energy action under Executive Order 13211. For the reasons previously stated, the proposed revisions to the regulations implementing SMCRA sections 506(b) and 511(b) would not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

The proposed rule requires an information collection under the Paperwork Reduction Act. In accordance with 44 U.S.C. 3507(d), OSM has submitted the information collection and recordkeeping requirements of 30 CFR part 774 to the Office of Management and Budget (OMB) for review and approval.

Title: Revision; Renewal; Transfer, Assignment, or Sale of Permit Rights; Successor in Interest; Post-Permit Issuance Requirements; and Other Actions Based on Ownership, Control, and Violation Information.

OMB Control Number: 1029–New.

Summary: Sections 506 and 511 of Public Law 95–87 provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 6,701.

Total Annual Burden Hours: 59,331.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of OSM and State regulatory authorities, including whether the information will have practical utility;

(b) The accuracy of OSM's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents.

Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. To obtain a copy of OSM's information collection clearance request, explanatory information, and related forms, contact John A. Trelease at (202) 208–2783 or by e-mail at *jtreleas@osmre.gov.*

By law, OMB must respond to OSM's request for approval within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and recordkeeping requirements by February 25, 2005, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to *OIRA_DOCKET@omb.eop.gov,* or via facsimile to (202) 395–6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, Room 252–SIB, 1951 Constitution Ave., NW., Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

National Environmental Policy Act

We have reviewed this proposed rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendices 1.9 and 2.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 774.17. (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 774

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: December 22, 2004.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR Parts 701 and 774 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Amend § 701.5 as follows:

a. Revise the definition of *Successor in interest.*

b. Revise the definition of *Transfer, assignment, or sale of permit rights.*

The revised definitions read as follows.

§ 701.5 Definitions.

* * * * *

Successor in interest means a person who follows a permittee, by statutory succession, operation of law, or as a result of a similar, non-substantive change in form, in ownership over the right to conduct surface coal mining

operations granted under a permit. Successors in interest will result from a non-commercial, non-substantive event, such as a business name change or an inheritance.

* * * * *

Transfer, assignment, or sale of permit rights means a commercial transaction resulting in a change in ownership over the right to conduct surface coal mining operations granted under a permit or a change in operator. A transfer, assignment, or sale of permit rights involves a substantive change and not a mere change in form.

* * * * *

3. Revise the heading for part 774 to read as follows:

PART 774—REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; SUCCESSORS IN INTEREST; POST-PERMIT ISSUANCE REQUIREMENTS; AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL, AND VIOLATION INFORMATION

4. The authority citation for part 774 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

5. Revise § 774.1 to read as follows:

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; transfer, assignment, or sale of permit rights; successors in interest; entering and updating information in AVS following the issuance of a permit; post-permit issuance requirements for regulatory authorities and permittees; and other actions based on ownership, control, and violation information.

6. Revise § 774.17 to read as follows:

§ 774.17 Transfer, assignment, or sale of permit rights.

(a) *General.* Permit rights obtained by way of a transfer, assignment, or sale of those rights are not valid without the prior written approval of the regulatory authority.

(b) *Application requirements.* An applicant for approval to conduct surface coal mining operations under permit rights obtained by way of a transfer or sale of those rights, or wishing to assign permit rights to an operator other than the permittee, must—

(1) Provide the regulatory authority with an application that must include—

(i) The name, address, and telephone number of the existing permittee and relevant permit number;

(ii) A description of the transfer, assignment, or sale;

(iii) The applicant's or operator's legal, financial, compliance, and related information as specified under part 778 of this chapter; and

(iv) Any proposed changes to the existing mining plan or reclamation plan.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the existing and proposed operations involved, indicating the name and address of the applicant, the existing permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent. No advertisement is required where there is only a change in operator through assignment.

(3) Obtain performance bond coverage in an amount sufficient to cover the proposed operations, as required under part 800 of this chapter, and provide proof of such coverage to the regulatory authority.

(c) *Public participation.* Any person having an interest that is or may be adversely affected by a decision on an application submitted under this section involving a transfer or sale, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) *Approval Criteria.* The regulatory authority may approve an application under this section if it finds in writing, in accordance with § 773.15(n) of this chapter, that the applicant or permittee—

(1) Is eligible to receive a permit under § 773.12 or § 773.14 of this chapter;

(2) Has submitted proof of sufficient performance bond coverage or other guarantee, as required under part 800 of this chapter;

(3) Has received approval of any proposed changes to the existing permittee's approved mining plan or reclamation plan; and

(4) Meets any other requirements specified by the regulatory authority.

(e) *Notification.* Following the permitting decision, the regulatory authority must—

(1) Notify the existing permittee; the transferee, assignee, or purchaser; commenters; and OSM, if OSM is not the regulatory authority, of its findings, and

(2) Enter and update application, permit, and other relevant information in AVS.

(f) *Continued mining and reclamation.* Any new permittee approved to commence surface coal mining operations under this section shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

7. Add new § 774.18 to read as follows:

§ 774.18 Successors in Interest.

(a) *Application requirements.* A successor in interest must—

(1) Apply for a new permit within 30 days of succeeding to the right to conduct surface coal mining operations granted under an existing permit; and

(2) Obtain performance bond coverage in an amount sufficient to cover the proposed operations, as required under part 800 of this chapter, and provide proof of such coverage to the regulatory authority.

(3) Meet any other requirements specified by the regulatory authority.

(b) *Continued operation under the existing permit.* A successor in interest who complies with paragraph (a)(1) of this section and is able to obtain the bond coverage of the original permittee, or equivalent bond coverage, may continue surface coal mining and reclamation operations under an existing permit until such successor in interest's application for a new permit is granted or denied.

[FR Doc. 05–1311 Filed 1–25–05; 8:45 am]

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